

## ARTICLE

# Extremist beliefs and child protection

## The considerations of Dutch judges in radicalization cases

*Lisette Dirksen Msc, dr. mr. Nadia Ismaïli, dr. Elanie Rodermond, prof. dr. mr. Catrien Bijleveld & prof. dr. mr. Masha Antokolskaia*

### 1. Introduction

‘The court is of the opinion that radical thoughts and beliefs alone do not pose a threat to the development of a newborn baby’.<sup>1</sup> In this Dutch case, a Child Protection Agency requested to remove a baby from its mother’s care and place her with a foster family. The possible radical beliefs of the mother were cause for concern for the child’s well-being, as the mother had traveled to IS territory in the past. However, the court decided that the beliefs of the mother as such did not pose a threat to the development of the baby as the parenting skills of the mother were deemed sufficient and a supervision order<sup>2</sup> was already in place. Interestingly, the court noted that the radical thoughts and beliefs of the mother could pose a threat ‘once concrete indications of such threats were to arise’.

This case illustrates a matter that has become more urgent recently, with family courts throughout Western Europe facing an increasing number of so-called ‘radicalization cases’.<sup>3</sup> Similar to the example above, these cases are all centered around the possible harmful impact of an extremist ideology of parents on their children.<sup>4</sup> In cases where the ideology of parents (potentially) leads to harm to the children, judges may have to decide on imposing child protection measures.<sup>5</sup> Such cases are complicated as both judges and child protection professionals are facing a difficult dilemma. On the one hand, it is firmly established in both international and national law that children and their parents have the right to protection of their family life and the right to live together, and that, in principle, it is in a child’s

1 Court Gelderland 14 May 2020, ECLI:NL:RBGEL:2020:2851.

2 In the Netherlands there are various child protection measures. A supervision order is the least severe measure and can be imposed when the development of a child is threatened. This measure limits the parental responsibility over a child and the family is appointed a family supervisor from a Child Protection Agency. More information will be provided in the paragraph discussing the legal framework (para. 3.2).

3 Radicalization cases are cases that are ‘concerned with preventing and countering (the involvement of children) in terrorism, extremism and radicalization’. See F. Ahdash, ‘The interaction between family law and counter-terrorism: a critical examination of the radicalisation cases in the family Courts’, *Child and Family Law Quarterly* 2018 vol. 30, no. 4, p. 2.

4 Ahdash 2018, p. 389-414.

5 The focus of this study is on child protection measures. Therefore, other family law cases are not taken into account.

best interest to be raised by their parents.<sup>6</sup> On the other hand, states have a moral and legal obligation to protect children, and to assure that children can develop as productive members of society with interests of their own.<sup>7</sup> This means that under certain circumstances it may actually be in the child's best interest to be separated from their parents. In fact, when parents are causing harm to the child, the state is obliged to intervene.<sup>8</sup> In any way, the removal of children from parental care is considered a serious interference that needs a strong justification.

Two factors that are specific to the context of radicalization cases further complicate decision-making by judges. First, there is a lack of knowledge about if, when and how parental extremist ideologies constitute harm to the child. While there is anecdotal evidence that growing up with parents adhering to extremist ideologies can be harmful to children, for example when such an environment leads to social isolation or being denied medical care,<sup>9</sup> empirical evidence substantiating these accounts remains scarce.<sup>10</sup> Second, next to a child itself being harmed by its parents' ideology, one also has to take into account the risk that parents transfer a violent ideology to their children, perhaps causing not only harm to the children, but also danger to society, should the children radicalize. Again, however, there is not much empirical research on this risk and underlying mechanisms.

All in all, judges and Child Protection Agencies dealing with radicalization cases need to take decisions in complicated cases in which clear tensions exist between the interests of parents, children, and the state, without much guidance in the form of solid empirical evidence. The aim of this article is thus to examine the considerations of judges concerning the application of child protection measures in order to prevent harm to children of parents adhering to extremist ideologies. More specifically, we will describe and analyze why and when judges find it necessary to intervene. The main research question to be answered in this article can be formulated as follows:

6 Convention on the Rights of the Child, New York, 20 November 1989, Art. 9.

7 See M.S. Wald, 'Symposium: The Family, the State, and the Law: Introduction', *University of Michigan Journal of Law Reform* 1985 vol. 18, no. 4, p. 799-804; M.C. Nussbaum, *Women and human development: The Capabilities Approach*, Cambridge: Cambridge University Press 2000; A. Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, Oxford: Hart Publishing 2004.

8 See C. O'Mahony, 'Child Protection and the ECHR. Making Sense of Positive and Procedural Obligations', *The International Journal of Children's Rights* 2019 vol. 27, no. 4, p. 660-693; ECtHR 12 July 2001 (*K. and T. v. Finland*), no. 25702/94, para. 168; ECtHR 8 April 2004 (*Haase v. Germany*), no. 11057/02, para. 99. The removal of children from parental care is an interference which can only be justified if the interference is in accordance with the second paragraph of Art. 8 ECHR. More information about international (human) rights and specifically Art. 8 ECHR will be provided in the international framework (para. 3.1).

9 Nationaal Coördinator Terrorismebestrijding en Veiligheid, *Dreigingsbeeld Terrorisme Nederland* 57, 2022a.

10 See for example L. van Wieringen, D.J. Weggemans, K. Krüsselmann and M. Liem, *Van Ouder op Kind*, Den Haag: Wetenschappelijk Onderzoeks- en Documentatiecentrum 2021 for an exploratory study on intergenerational transmission of jihadism and other extremist ideologies.

*What are the considerations of Dutch judges in the light of the international (human rights) law in order to protect children from actual or potential harm resulting from extremist beliefs and/or behavior of their parents?*

This study offers an initial exploration based on the analysis of Dutch published case law in the context of international human rights law, Dutch legislation, policy documents and available literature to examine when extremist beliefs of parents are considered harmful to their child. In order to answer this research question, we will first outline the societal and legal context in which the judges adjudicate the ‘radicalization’ cases. Before doing so, we will briefly address the concepts of radicalization and extremist beliefs (para. 2) and then discuss more extensively the relevant international human rights and Dutch legal frameworks (para. 3). After that the methodology of the conducted systematic case law review will be discussed (para. 4), followed by the results (para. 5) and discussion (para. 6).

## 2. Extremist beliefs and intergenerational transmission

While governments have been struggling with how to deal with radicalized individuals ever since the proclamation of the so-called Caliphate in 2014, more recently the focus has shifted towards the children of these individuals. Whereas the demise of the IS Caliphate has lowered the likelihood that radicalized parents take their children abroad, governments now are concerned about the transmission of (violent) extremist ideologies within the family environment, and, resultingly, a new generation of home-grown extremists.<sup>11</sup> The goal of this section is to introduce three central concepts within this study, namely extremist beliefs, extremism and intergenerational transmission.

### 2.1 Extremist beliefs

When describing extremist beliefs, important concepts to consider are radicalization and ideology. Radicalization is defined here as ‘the process in which an individual or a group embraces a radical ideology or belief that accepts, uses or condones violence, including acts of terrorism, to reach a specific political or ideological purpose.’<sup>12</sup> Thus, through a process of radicalization an individual begins to embrace extremist beliefs or can increasingly become extremist in those beliefs. However, regarding radicalization, it is important to note that radicalization rarely

11 See Algemene Inlichtingen- en Veiligheidsdienst, *Jaarverslag 2021* (report) 2021; Nationaal Coördinator Terrorismebestrijding en Veiligheid 2022a; Nationaal Coördinator Terrorismebestrijding en Veiligheid, *Nationale Contraterrorisme Strategie 2022-2026. Het voorkomen en aanpakken van terrorisme en gewelddadig extremisme* 2022b.

12 European Commission, ‘Prevention of radicalization’, available at: [https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-radicalisation/prevention-radicalisation\\_en#:~:text=Radicalisation%20is%20a%20phased%20and,specific%20political%20or%20ideological%20purpose](https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-radicalisation/prevention-radicalisation_en#:~:text=Radicalisation%20is%20a%20phased%20and,specific%20political%20or%20ideological%20purpose).

results in (violent) extremist behavior.<sup>13</sup> Even though definitions of radicalization may vary,<sup>14</sup> the term ideology is present in almost every one of them. An ideology can be defined as a belief system that individuals or groups commit to. It can explain an individual's attitude towards life and society, and certain behaviors compliant with those beliefs.<sup>15</sup> Generally, beliefs can be defined as attitudes towards what an individual regards to be true, and beliefs are considered one of the factors that influence individuals' behavior.<sup>16</sup> It is then the question which beliefs (and ideologies) can be considered extremist. Here, it is important to note that extremism is context dependent.<sup>17</sup> As Wibisono, Louis and Jetten point out, 'what is perceived as extreme in one historical or cultural context may be moderate or mainstream in another.'<sup>18</sup>

When we look at definitions of extremism, such as the one formulated by the Dutch National Coordinator for Security and Counterterrorism, we speak of extremism when individuals or groups are – due to their ideological beliefs – willing to overstep the bounds of the law or engage in (violent) activities that undermine the democratic rule of law;<sup>19</sup> or extremism described as endorsing 'an abstract ideal or set of principles that is more or less highly contested'.<sup>20</sup> The first definition shows that extremists generally accept the use of violence, yet the second one shows that violence is not a necessary element of extremism. For this study we chose to use the broader definition to see what judges include in this and to prevent excluding potentially relevant cases as there is not an abundance of case law available. This, combined with the aforementioned definition of beliefs, would mean that extremist beliefs can be defined as an adherence to an abstract ideal or set of principles that is more or less highly contested, but that the individual holds to be true. In essence, such beliefs can be found in virtually all philosophies of life, ranging from far-right, believing that we should live in a white ethnostate to far-left views such as antifascist extremism, but also extremist interpretations of

- 13 K. van den Bos, *Why people radicalize*, Oxford: Oxford University Press 2018; F. Thijs, E. Rodermond, E.R. Kleemans and S.G. van de Weijer, 'Violent and Nonviolent Terrorist Suspects: a Comparative Analysis Based on Data from the Netherlands', *European Journal on Criminal Policy and Research* 2022 vol. 30, no. 1, p. 1-21.
- 14 Many scholars have researched this concept, but there is no consensus on what radicalization exactly entails. It is a contested, ambiguous concept that is still evolving. However, scholars do agree that it is a process. See P.R. Neumann, 'The trouble with radicalization', *International affairs* 2013 vol. 89, no. 4, p. 873-893 and M. Sedgwick, 'The concept of radicalization as a source of confusion', *Terrorism and political violence* 2010 vol. 22, no. 4, p. 479-494.
- 15 R. Bellandi, 'Terrorist Decision-Making, Ideology, and Counterterrorism', in: M.D. Krohn, N. Hendrix, G. Penly Hall & A.J. Lizotte (eds.), *Handbook on Crime and Deviance*, Cham: Springer 2019, p. 625-639; K. Loewenstein, 'Political systems, ideologies, and institutions: The problem of their circulation', *Western Political Quarterly* 1953 vol. 6, no. 4, p. 689-706.
- 16 R. Peels and N. Kindermann, 'What are fundamentalist beliefs?', *Journal of Political Ideologies* 2022, p. 1-21.
- 17 H.F. Dahms, 'Adorno's critique of the new right-wing extremism: How (not) to face the past, present, and future', *Disclosure: A Journal of Social Theory* 2020 vol. 29, no. 1, p. 129-179.
- 18 S. Wibisono, W.R. Louis and J. Jetten, 'A multidimensional analysis of religious extremism', *Frontiers in Psychology* 2019 vol. 10, no. 2560, p. 3.
- 19 Nationaal Coördinator Terrorismebestrijding en Veiligheid 2022b.
- 20 Dahms 2020, p. 134.

religions, institutional distrust, and lifestyle ideologies. We want to underline that having such beliefs in itself is not problematic. This only changes where such beliefs cause harm to oneself or others. Thus, it remains an open question which beliefs and following behaviors are generally considered to be within the boundaries of acceptability, what crosses those boundaries and which of those transgressions is then harmful. Here it is important to note that only a small part of such beliefs can justify state intervention. Parents are largely left free to believe what they want to believe unless they act upon their beliefs in a manner that is harmful to their child. Extremist beliefs can lead to a variety of behaviors of the parents that could potentially harm their children. An example of such extremist lifestyle ideologies are parents who give their (very young) children vegan food only as all non-vegan food would be toxic. While a vegan diet is not necessarily harmful to children, it can take extreme forms, even leading to malnutrition and starvation. Australia, the United States and Sweden, among other countries, have seen such cases in which children were severely malnourished and two even passed away.<sup>21</sup> Next to parents' potential harmful behavior due to their beliefs and its influence on their children, it is also the question whether their beliefs are transmitted to the next generation.

## 2.2 Intergenerational transmission

As mentioned before, governments fear the transmission of extremist ideologies from parent to child due to suspected harm to the child and a potential safety threat for society. In broad terms, intergenerational transmission refers to the transmission of traits, beliefs and behaviors from parents to their children (or from grandparents to their grandchildren).<sup>22</sup> Indeed, research has shown that children resemble their parents in various ways. This can range from physical appearance to socioeconomic status, but also personality, demographic characteristics, antisocial behavior and criminal offending.<sup>23</sup> This is not surprising as parents generally form a large part of the family circumstances in which a child grows up, and children share genes with their parents.<sup>24</sup> Intergenerational transmission can take place in a

- 21 B. Kerstens, 'Ouders bestraft voor veganistisch dieet baby, meisje was zwaar ondervoed en had geen tanden' available at: [www.ad.nl/buitenland/ouders-bestraft-voor-veganistisch-dieet-baby-meisje-was-zwaar-ondervoed-en-had-geen-tanden~aef7b3ee/?referrer=https%3A%2F%2Fwww.google.com%2F](http://www.ad.nl/buitenland/ouders-bestraft-voor-veganistisch-dieet-baby-meisje-was-zwaar-ondervoed-en-had-geen-tanden~aef7b3ee/?referrer=https%3A%2F%2Fwww.google.com%2F); R. Mens, 'Moeder krijgt levenslang voor uithongeren zoontje, kreeg alleen vegan eten', available at: [www.metronieuws.nl/in-het-nieuws/buitenland/2022/08/vegan-moeder-levenslang/](http://www.metronieuws.nl/in-het-nieuws/buitenland/2022/08/vegan-moeder-levenslang/); E. van den Outenaar, 'Ouders in cel na veganistisch dieet voor kind: 'Al de rest is giftig'', available at: [www.demorgen.be/nieuws/ouders-in-cel-na-veganistisch-dieet-voor-kind-al-de-rest-is-giftig-b9ce1b83/?referrer=https%3A%2F%2Fwww.google.com%2F](http://www.demorgen.be/nieuws/ouders-in-cel-na-veganistisch-dieet-voor-kind-al-de-rest-is-giftig-b9ce1b83/?referrer=https%3A%2F%2Fwww.google.com%2F).
- 22 L. Lochner, 'Intergenerational Transmission', in: S.N. Durlauf & L.E. Blume (eds.), *The New Palgrave Dictionary of Economics* (2nd edn.), London: Palgrave Macmillan 2008.
- 23 V. Eichelsheim, 'Crimineel gedrag over de levensloop én over generaties: de rol van het gezin', *Tijdschrift voor Criminologie* 2019 vol. 61, no. 2, p. 132-147; S.G. van de Weijer, C.C. Bijleveld and A.A. Blokland, 'The intergenerational transmission of violent offending', *Journal of Family Violence* 2014 vol. 29, no. 2, p. 109-118; A.C. Liefbroer, *Valt de appel nog steeds niet ver van de boom? Over intergenerationale overdracht van demografisch gedrag* (inaugural lecture), Amsterdam: Vrije Universiteit Amsterdam 2005.
- 24 Eichelsheim 2019.

direct or indirect manner<sup>25</sup> but it could also not take place at all and discontinue.<sup>26</sup> In a literature review, Eichelsheim discussed for example that – in spite of an increased risk – criminal behavior does not necessarily continue from parents to children. This means that it is not deterministic, which is underlined by the fact that there are differences between siblings in this situation. Each sibling is exposed to the same parental risk factors, yet they are not equally prone to exhibit the criminal behavior of their parents.<sup>27</sup>

An increasing body of literature also points at the intergenerational transmission of political preferences<sup>28</sup> and religious beliefs.<sup>29</sup> The question is, then, whether extremist beliefs (*i.e.*, the ‘abstract ideals or sets of principles that are more or less highly contested’) are also transferred from one generation to the next. Thus far, literature on the intergenerational transmission of extremist beliefs is scarce. What has been found so far is that right-wing extremist attitudes of parents seem to predict their children’s right-wing extremist attitudes.<sup>30</sup> In addition, a recent systematic literature review showed that ‘extremist parents may indeed play a role in their children’s later radicalization in various ways.’<sup>31</sup>

Despite these findings, the extent to and precise circumstances under which extremist ideologies are transmitted to the next generation remain unclear, and the same holds for the potential consequences of such transmission. At the same time, these potential consequences are precisely what needs to be taken into account when considering the potential harm for the child. A complicating factor in this regard is the broad variety of possibly harmful ideologies as shown in paragraph 2.1, but also the difference within those ideologies of the extent to which an individual’s beliefs are extreme and consequently the extent to which extremist beliefs are harmful for children. This complexity is further increased due to the possible intergenerational transmission of such beliefs from parents to children. Which of these beliefs and behaviors, resulting from the various ideologies, are considered harmful by judges, and therefore justify state intervention will be discussed in paragraph 4.

25 D.P. Farrington, ‘Families and Crime’, in: J.Q. Wilson & J. Petersilia (eds.), *Crime and Public Policy*, Oxford: Oxford University Press 2011, p. 130-157.

26 Eichelsheim 2019.

27 Eichelsheim 2019.

28 M.K. Jennings, L. Stoker and J. Bowers, ‘Politics across generations: Family transmission reexamined’, *The Journal of Politics* 2009 vol. 71, no. 3, p. 782-799; L.R. Durmuşoğlu, S.L. de Lange, T. Kuhn and W. van der Brug, ‘The Intergenerational Transmission of Party Preferences in Multiparty Contexts: Examining Parental Socialization Processes in the Netherlands’, *Political Psychology* 2023 vol. 44, no. 3, p. 583-601; M.M. van Ditmars, ‘Political socialization, political gender gaps and the intergenerational transmission of left-right ideology’, *European Journal of Political Research* 2023 vol. 62, no. 1, p. 3-24.

29 I.A. Gutierrez, L.J. Goodwin, K. Kirkinis and J.S. Mattis, ‘Religious socialization in African American families: The relative influence of parents, grandparents, and siblings’, *Journal of Family Psychology* 2014 vol. 28, no. 6, p. 779-789; B. Lee and K. Knott, *Ideological transmission. The Family and Ideological Transmission*, Centre for Research and Evidence on Security Threats 2017.

30 A. Avdeenko & T. Siedler, ‘Intergenerational correlation of extreme right-wing party preference and attitudes toward immigration’, *The Scandinavian Journal of Economics* 2017 vol. 119, no. 3, p. 768-800.

31 Van Wieringen, Weggemans, Krüsselmann and Liem 2021, p. 121.

### 3. Legal framework

As the Netherlands is party to the Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR), Dutch family law is shaped by and measured against those human rights treaties. This means that national laws and regulations should be in line with obligations that stem from those treaties. Hence, before discussing the Dutch legal framework concerning child protection measures, it is important to first look at the international legal framework. The focus will be on cases regarding child protection measures and religious freedom in respect to parental rights.<sup>32</sup> Thus, we will first examine obligations that stem from international (human rights) law (para. 3.1), then the Dutch national legal framework will be discussed (para. 3.2) and we will conclude with an account of the aforementioned conflicting interests of parents, children and the state (para. 3.3).

#### 3.1 *International legal framework*

The CRC is a treaty that specifically holds children's rights. As set out in the preamble, states have the duty to safeguard the development of children as functioning members of society and ensure that children receive the care and education needed to become opportunity rich members of society. Article 3(1) CRC holds the principle that the best interests of the child shall be a primary consideration in all actions concerning children. This principle is one of the CRC's four general principles and, while it also has meaning on its own, is particularly relevant for the interpretation and fulfillment of all other rights of the treaty.<sup>33</sup> Important in this regard is Article 9 CRC, which notes that children shall in principle not be separated from their parents against their will as it is in the child's best interest to be raised by their parents.<sup>34</sup> However, sometimes being raised by their parent(s) forms a threat to the development of the child. States have the obligation to assist parents with their child-rearing responsibilities (Article 18 CRC). And, Articles 6(2) and 19 CRC hold (among other things) that the state is obliged to ensure the development of the child and to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, while in the care of parent(s). In these cases, separation from the parents might be warranted in the child's best interest. Should that be the case, then Article 9 CRC prescribes a careful legal procedure. Taking this to the present study, if strict (religious) beliefs of parents result in an inability for the child to develop socially, emotionally and spiritually, states have a duty to protect the child's physical and mental integrity as this is not considered to

32 Preferably the cases specifically concern welfare concerns of children of which one family member adheres to a (violent) extremist ideology. However, the ECtHR has not seen a large amount (even very little) of such cases regarding radical/extremist ideologies. Therefore, cases in which other kinds of ideologies could cause harm for the child were also included. The cases in which it has been decided that the (religious) convictions of the parent(s) do indeed cause harm for the child can serve as comparison to analyze the different motivations the Courts provide in this context.

33 Convention on the Rights of the Child, New York, 20 November 1989.

34 The CRC accordingly stresses that the primary responsibility to raise children lies with the parents (see Art. 5 CRC).

be in the best interest of the child.<sup>35</sup> Importantly, family law judges are required to justify how they examined the best interests of the child.<sup>36</sup>

While the CRC has an international monitoring body (the Committee on the Rights of the Child) its views and decisions are authoritative, yet not legally binding. The CRC, however, does not function in isolation. Here the European Court of Human Rights (ECtHR) plays an important role. Contrary to the CRC, the nature and scope of the rights in the ECHR have been interpreted in the case law of the ECtHR.<sup>37</sup> The ECHR is a general human rights treaty that does not specifically mention children's rights. Nevertheless, it has developed child protection principles through interpreting human rights in a manner that is 'child specific' in its case law by interpreting obligations imposed on states by Article 8 ECHR in the light of the CRC.<sup>38</sup> This means that important CRC principles that are interpreted through ECtHR case law can also gain binding force.<sup>39</sup>

When looking at the ECHR in light of state intervention and religious freedom in respect to parental rights (in the context of extremist beliefs), Articles 8, 9, 10 and 14 of the ECHR are of importance.<sup>40</sup> Notwithstanding the relevance of Articles 9, 10 and 14, this study concerns the use of child protection measures – which are generally assessed on the basis of Article 8 ECHR – and as such, the focus will be on Article 8. This article holds that states should refrain from interference with family life (the so-called negative obligation). The removal of children from parental care is an interference which can only be justified if the interference is in accordance with the second paragraph of Article 8 ECHR. Hence, if the interference is prescribed by law, in pursuit of a legitimate aim and necessary in a democratic society. The notion of 'necessity' implies that an interference is based on a pressing social need, and must be proportionate to the legitimate aim sought.<sup>41</sup> Serious

35 See M. Jonker, R. van Spaendonck and J. Tigchelaar, 'Religie en cultuur in familierechtelijke beslissingen over kinderen', *Familie & Recht* 2015.

36 Convention on the Rights of the Child, New York, 20 November 1989.

37 N. Ismaili, *Who Cares for the child*, Amsterdam: Vrije Universiteit Amsterdam 2019.

38 M.R. Bruning, Y.N. van den Brink and E.C.C. Punselie, *Jeugdrecht en jeugdhulp*, Den Haag: Sdu 2020; Ismaili 2019.

39 Formally ECtHR judgments are legally binding only for the state that violated the Convention (*res judicata*). However, in practice, judgments are guiding for all state parties as national courts have to follow the ECtHR's interpretation of ECHR provisions in order to prevent a violation of the convention in a case similar to a previously assessed case. This has been argued as falling under the so-called *res interpretata* effect, *erga omnes* effect or 'orientation effect'. See, for example, T. Barkhuysen and M.L. van Emmerik, 'A comparative view on the execution of judgments of the European Court of Human Rights', in: T.H. Christou & J.P. Raymond (eds.), *European Court of Human Rights, Remedies and Execution of Judgements*, London: BIICL 20015, p. 1-23; G. Ress, 'The Effect of Decisions and Judgements of the European Court of Human Rights in the Domestic Legal Order', *Texas International Law Journal* 2005 vol. 40, no. 3, p. 374.

40 Art. 9 protects the freedom of thought, conscience and religion, and Art. 10 protects the freedom of expression, while Art. 14 holds the principle of equality and prohibits discrimination (e.g., religion or race). However, in family law cases before the ECtHR, the role of both articles is rather limited as the court often uses Art. 8 ECHR (at times in combination with Art. 14) in such instances. See Jonker, van Spaendonck and Tigchelaar 2015.

41 ECtHR 1 July 2004 (*Couillard Maugery v. France*), no. 64796/01; ECtHR 26 October 2006 (*Wallová and Walla v. Czech Republic*), no. 23848/04, para. 68.



interferences must therefore be based on considerations inspired by the interests of the child and have sufficient weight and solidity.

First, a number of general principles regarding child protection measures will be discussed. Subsequently, the relevant obligations in cases regarding religious convictions will be further explained.

### 3.1.1 *Relevant obligations regarding child protection measures*

When looking at child protection measures, there are a number of 'general' principles that arise from Article 8 ECHR case law. States enjoy a certain margin of appreciation, *i.e.*, the level of intensity of scrutiny of the ECtHR, in determining the necessity and proportionality of child protection measures.<sup>42</sup> In cases concerning family law, the ECtHR has oftentimes held that the diversity in practices of the different member states is important and that local authorities may be better placed to decide on the appropriateness of a certain intervention. This has resulted in a wide margin of appreciation for member states' initial decision to impose child protection measures. The court did stress that in all decisions, the best interests of the child are essential. However, the margin of appreciation becomes narrower where it concerns further restrictions of parental rights in order to minimize the risk of permanent damage to the parent-child relationship.<sup>43</sup> This means that all decisions following an out-of-home placement will be strictly assessed by the ECtHR.

The ECtHR has oftentimes stated that the fact that a child could be placed in a more beneficial environment for their upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents. Other circumstances must exist pointing to the 'necessity' for such an interference with the right of parents and children under Article 8 ECHR.<sup>44</sup> This means that additional circumstances are required. Consequently, the primary responsibility of parents is oftentimes upheld, even when family life is not ideal.<sup>45</sup> When certain circumstances indeed point towards the 'necessity' for such an interference, such as physical or psychological harm to the child, it is of great importance that the imminent danger to the child is actually established.<sup>46</sup> Other important obligations regarding child protection measures are that they need to be regarded as a temporary measure that should be discontinued as soon as circumstances permit,<sup>47</sup> that states have to carefully examine possible alternatives<sup>48</sup> and that stricter principles apply for

42 See also J. Gerards, *EVRM algemene beginselen*, Den Haag: Sdu uitgevers 2011.

43 ECtHR 7 August 1996 (*Johansen v. Norway*), no. 17383/90. See also Gerards 2011.

44 ECtHR 12 July 2001 (*K. and T. v. Finland*), no. 25702/94, para. 168. See also M.R. Bruning and K.A.M. van der Zon, 'Uithuisplaatsing van kinderen, Europese controverse en de rol van het EHRM', *NTM-NJCM* 2022, vol. 27, no. 1, p. 3-21.

45 ECtHR 12 July 2001 (*K. and T. v. Finland*), no. 25702/94, paras 168 and 173.

46 ECtHR 8 April 2004 (*Haase v. Germany*), no. 11057/02, para. 99. See also Ismaili 2019, p. 45.

47 ECtHR 26 February 2002 (*Kutzner v. Germany*), no. 46544/99, para. 76.

48 ECtHR 21 September 2006, no. 12643/02 (*Moser v. Austria*), para. 69. In this case the children were taken into public care because their parents were unable to care for them properly due to circumstances (lack of appropriate accommodation, financial means and unclear residence status). Here the court stressed the importance of a particularly careful examination of possible alternatives. See also Bruning and van der Zon 2022, p. 4-5.

taking very young children into public care.<sup>49</sup> In short, the ECtHR does not quickly accept this far-reaching measure.

### 3.1.2 Care orders in the context of (strict religious/extremist) convictions

We will now analyze how the ECtHR applies those principles in cases where strict religious/extremist convictions of the parents potentially harm the children. These cases concern either child protection measures or parental disputes on custody and/or main residence of children. The cases thus concern interventions in the family life by the state as well as disputes between parents. That the state is an actor in child protection cases may have consequences for the margin of appreciation given to domestic authorities and consequently, the balancing of interests may differ in both types of cases. Nonetheless, the underlying question in both situations, namely whether the actions of parents (due to their beliefs) can have harmful consequences for their child(ren), remains the same. Hence, the cases that address parental disputes also shed light on the consequences of beliefs of parents on children's well-being. For this reason, and due to the scarcity of cases on this topic, we chose to include both.

The case of *Hoffmann v. Austria* is a case that concerned a parental dispute in regards to custody rights and religious freedom.<sup>50</sup> The applicant became a Jehovah's Witness after her divorce and on that basis the father was granted (sole) custody by the domestic Supreme Court. The Supreme Court agreed with the father that the mother's religious convictions had a negative influence on the upbringing and well-being of the children. The Supreme Court, thereto, argued that Austrian law (*i.e.*, the Austrian Religious Education Act) holds that a parent may not give the children a religious upbringing without the consent of the other parent in deviation from a previous agreement, which in this case would be the situation before their divorce. The Supreme Court also held that the refusal of blood transfusions would in fact be harmful to the children as the procedure for substitute permission of a court in case of a medically necessary blood transfusion could cause a life-threatening delay. Lastly, the Supreme Court argued that if the children were educated according to the religious teaching of the Jehovah's Witnesses, they would become social outcasts and therefore experience harm. The ECtHR did not agree with the Supreme Court and found a violation of the mother's Article 8 *jo.* Article 14 ECHR rights. According to the ECtHR, the Austrian Supreme Court had assigned decisive significance to the Austrian Religious Education Act. The ECtHR noted in addition that it appeared that the Supreme Court's view was based on a perceived rather than an actual negative influence (social isolation and refusal of blood transfusion) on the children. The ECtHR further stated that the Supreme Court weighed the matters of social isolation and blood transfusion differently than the lower domestic courts whose reasoning was supported by psychological expert opinion.

49 ECtHR 12 July 2001 (*K. and T. v. Finland*), no. 25702/94, para. 168. In this instance, the newborn baby was taken away from its mother at the moment of its birth. The court found this an extremely harsh measure and stated that there must be extraordinarily compelling reasons before a baby can be physically removed from the care of its mother, against her will, immediately after birth (*K. and T. v. Finland*, para. 168). See also Bruning and van der Zon 2022, p. 5.

50 ECtHR 23 June 1993 (*Hoffman v. Austria*), no. 12875/87.

Hence, in this case the father's claim that the mother's beliefs were indeed harmful to the children was not sufficiently substantiated.<sup>51</sup> Yet, the reference to the reasoning of the lower court may imply that the ECtHR's decision would have been different if the harm related to social isolation and/or blood transfusion had been substantiated by concrete evidence.<sup>52</sup>

The ECtHR re-established the above principles in the case of *Palau-Martinez v. France*.<sup>53</sup> This case was likewise brought to the court by a mother who was a Jehovah's Witness and claimed that there had been an interference with her right to respect for family life as her children were placed with their father. This decision was made on the basis of generalities concerning Jehovah's Witnesses such as their strictness, intolerance and the obligation on children to proselytize.<sup>54</sup> The ECtHR noted the absence of information on the well-being of the children due to the refusal of the mother's request for a social inquiry report by the French Court of Appeal. The ECtHR noted that such an inquiry would no doubt have provided tangible information on the children's lives with each of their parents and made it possible to ascertain the impact, if any, of their mother's religious practice on their lives and upbringing during the years following their father's departure when they had lived with her. Therefore, the court held that there had been a violation of the mother's rights, protected under Article 8 ECHR's in conjunction with Article 14, as under these circumstances there was no concrete evidence on the basis of which harm could be established.

A last example of a case in which no harm could be established is *Vojnity v. Hungary*. Here the father's access rights were completely withdrawn because, according to the domestic court, the father had showed intensive efforts to transfer his convictions to his child and that his 'irrational worldview made him incapable of bringing up his child'. The ECtHR however, did not agree and stated that while the domestic court mentioned that the harm consisted of anxiety and fear, there was no concrete evidence that the applicant's religious convictions actually involved dangerous practices or exposed his son to physical or psychological harm. There were only some feelings of discomfort or embarrassment for the children, and, according to the ECtHR, this was insufficient ground for a total removal of the applicant's access rights. Here, it is to be recalled that a measure as radical as the total severance of contact can be justified only in exceptional circumstances. There

51 ECtHR 23 June 1993 (*Hoffman v. Austria*), no. 12875/87 paras 99 and 102. See also Jonker, Spaendonck and Tigchelaar 2015.

52 See also J. Tigchelaar and M. Jonker, 'How is a Judicial Decision Made in Parental Religious Disputes? An analysis of determining factors in Dutch and European Court of Human Rights case law', *Utrecht Law Review* 2016 vol. 2, no. 12, p. 24-40.

53 ECtHR 16 March 2004 (*Palau-Martinez v. France*), no. 64927/01, paras 42-43. See also Jonker, Spaendonck and Tigchelaar 2015.

54 *I.e.*, to try to persuade someone to change their religious or political beliefs or way of living to your own.

had accordingly been a violation<sup>55</sup> of the father's Article 8 and Article 14 rights. However, given the wording of the court it is imaginable that the decision would have been different if there either would have been concrete evidence of harm or if it concerned a limitation instead of a total severance of the father's access rights. To summarize, in these cases the ECtHR has shown that it follows from Article 8 ECHR that strict religious ideologies of parents are in itself not a reason to limit parental rights. It seems that even if the lifestyle of the parent following that ideology differs from what is generally considered to be normal in the eyes of the majority of society, it cannot lead to state intervention on that basis, especially without concrete evidence of harm to the child.

However, there are cases in which the ECtHR was convinced that there was sufficient concrete evidence of harm. The first of these cases is *Deschomets v. France*. In this case, the domestic courts had placed the children with the father who had left the religious group Brethren after he had divorced the applicant. The ECtHR held, different from *Hoffman* and *Palau-Martinez*, that the domestic court's ruling was not based on generalities about the Brethren group but rather on a welfare report which laid down concrete harm. The report noted that both children stated that they wanted to change their way of life. They no longer wanted to attend the Brethren meetings and experienced constant feelings of guilt when they were with the mother (although they remained very attached to her). The ECtHR noted that even though adherence to a religious movement cannot in itself justify a change in the children's residence, the findings set out in the welfare report could not be ignored.<sup>56</sup> The welfare report showed that the children experienced feelings of guilt, pressure from both the mother and from the Brethren movement and were overall very unhappy. The children had unquestionably chosen their father's lifestyle. The ECtHR therefore held that the welfare report served as concrete evidence of (psychological) harm. The domestic court had been able to make a concrete assessment of the children's best interest and the impact of the mother's lifestyle on their best interests. Hence, no violation of Article 8 jo. Article 14 ECHR was found.<sup>57</sup>

A last case that is relevant in light of the religious freedom of parents and their parental responsibility is the case of *Wetjen and others v. Germany* which revolved around the caning (*i.e.*, corporal punishment) of children of two different families. The ECtHR agreed with the domestic court that imminent danger (*i.e.*, harm to the children) was established. For the Wetjen family, the domestic court had established physical harm on the basis of statements of the parents and witnesses, and the

55 With regards to the margin of appreciation, it is important to note that this case not only concerned a placement into public care, but also removing the father's access rights. Even in the case that the government's concern for the child's psychological health was a sufficiently weighty reason for the father's unequal treatment, completely removing the father's access rights was unjust. As was previously discussed, for denying access to the child a stricter standard is necessary than when it regards custody.

56 This was also the case because the applicant provided the children with a high standard of care and education, and as the continuation of the children's schooling is not currently at issue.

57 ECtHR 13 May 2006 (*Deschomets v. France*), no. 31946/02. See also Jonker, Spaendonck and Tigchelaar 2015.

guidelines in a leaflet titled 'Our teachings on child training'. In particular, the father had stated that, in his opinion, mild caning constituted neither violence nor child abuse. For the other family, the domestic court also based their decision on the statement of the oldest daughter. The daughter confirmed the practice of caning but explained that there is an age limit to this form of punishment. In the past she had been caned herself, however, after her Bat Mitzvah the caning stopped. She was therefore returned to her parents. However, due to their younger age, the other children of both families were still at risk. In addition, the parents had not shown any willingness to refrain from disciplining the children as this was based on their 'unshakeable dogma'. The ECtHR stated that by limiting the withdrawal of parental responsibility to those areas that were strictly necessary and only to those children that were of an age where corporal punishment could be expected and were therefore in a real and imminent risk of degrading punishment, the domestic court's decision was based on a sufficient factual foundation. The ECtHR reiterated that the right to respect for family life and to religious freedom, together with the right to respect for parents' philosophical and religious convictions in education, as provided for in Article 2 of Protocol No. 1 to the Convention, convey to parents the right to communicate and promote their religious convictions in bringing up their children (as was also established in *Vojnity v. Hungary*). While the court has accepted that this might even occur in an insistent and overbearing manner, it has stressed that it may not expose children to dangerous practices or to physical or psychological harm. This case is also an example of how the ECtHR interprets relevant CRC principles by including various CRC articles which oblige states to take appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, in its judgment.<sup>58</sup> It also shows that parents are free to raise their children as they see fit until they cause, in this case physical, harm to their child.

To summarize, the ECtHR has repeatedly stated that strict religious ideologies of parents are in itself not a reason to limit parental rights, but acting upon those beliefs may be. The tolerance for diversity in upbringing is a defining feature of (international) child law.<sup>59</sup> Parents are largely left free to raise their children as they see fit, as long as they stay within the limits of the law. The cases described above showed, however, that an important limitation to this right is to protect the child from (the risk of) significant harm. When establishing harm, it is important that the actual danger to the child is established. This can be physical harm in the form of caning or psychological harm in the form of anxiety, guilt, and unhappiness. Regardless of the type of harm, it is a necessity that concrete evidence of such harm exists. Welfare reports of the parents' (religious) beliefs negatively influencing the daily lives of the children are an example of such concrete evidence. However, the ECtHR has been cautious to establish in detail what that harm, *i.e.*, 'negative

58 ECtHR 22 March 2018 (*Wetjen and Others v. Germany*), no. 68125/14 and 72204/14, paras. 44 and 66. See also Bruning and van der Zon 2022, p. 4.

59 R. Taylor, 'Religion as harm? Radicalisation, extremism and child protection', *Child and Family Law Quarterly* 2018 vol. 30, no. 1, p. 41-60.

influence', would entail in order to avoid characterizing certain beliefs or views from parents as harmful in and of themselves.<sup>60</sup>

### 3.2 Dutch child protection law

Dutch family law is measured against the ECHR and CRC, meaning that all regulations should be in line with the framework formed by those two treaties.<sup>61</sup> Dutch judges therefore have to operate within the described framework. This paragraph will focus on the national legal framework and the Dutch system of child protection measures (in light of children with parents with extremist ideologies). In 2015 the Dutch child care system changed due to the adoption of the Youth Act (in Dutch: *Jeugdwet*). As a consequence, youth care is now arranged on a local level through municipalities. The Youth Act regulates the municipal responsibility for prevention, support, help and care of young people and parents in upbringing and parenting problems, psychological problems and disorders. The Youth Act has a major impact on the organization of youth care.<sup>62</sup> There are several agencies that play an important role within the Dutch child care system. These are the Advice and Reporting Centre for Domestic Violence and Child Maltreatment,<sup>63</sup> the Child Care and Protection Board (CCPB<sup>64</sup>), and certified agencies.<sup>65</sup> It is preferred to offer parents assistance in a voluntary form. However, when parents are unable to care for their child and are unable to improve their own skills as a parent in a voluntary setting, a child protection measure might be necessary. The Dutch Civil Code (CC) lays down the following measures: a supervision order,<sup>66</sup> an out-of-home placement,<sup>67</sup> and the termination of parental responsibility.<sup>68</sup> The measures will be discussed consecutively.

- *Supervision order*

A supervision order is the least severe child protection measure. During a supervision order, the parents retain custody, yet this is partially restricted. In

60 Taylor 2018, p. 41-60.

61 J. Gerards and J. Fleuren, 'The Netherlands', in: J. Gerards & J. Fleuren (eds.), *Implementation of the European Convention on Human Rights and of the judgements of the ECtHR in national case law. A comparative analysis*, Cambridge: Intersentia 2014, p. 217-260.

62 M.R. Bruning, K.A.M. van der Zon, D.J.H. Smeets and H.J. van Boven, *Eindevaluatie Wet herziening kindbeschermingsmaatregelen*, Wetenschappelijk Onderzoek- en Documentatiecentrum 2022.

63 Also known as Safe at Home. This is an organization that offers advice and support for victims (also adults, not just children) and individuals who may know a victim and have concerns. In the Netherlands, anyone with concerns for a child's well-being can report their concerns to Safe at Home. This means that professionals such as teachers as well as 'lay people' such as neighbors can make a report. See also <https://veiligthuis.nl/veilig-thuis-is-there-for-everyone>.

64 In Dutch: *de Raad voor de Kinderbescherming*. For this article we use the English translation (Child Care and Protection Board) and abbreviation (CCPB).

65 H. Bouma, *Taking the child's perspective: exploring children's needs and participation in the Dutch child protection system*, Groningen: Rijksuniversiteit Groningen 2019, p. 10-25. For a detailed overview of how the system is arranged and the tasks of each agency, see for example Bruning, Van den Brink and Punselie 2020.

66 Art. 1:255 CC.

67 Art. 1:265 CC.

68 Art. 1:266 CC.

order for a supervision order to be imposed three legal requirements should be met. These are the following: (1) there must be a serious threat to the development of the child,<sup>69</sup> (2) there is no or a lack of willingness of parents to cooperate with the care that is necessary to avert that threat, and (3) there is an expectation that parents will be able to take care of the child alone within a – from the perspective of that child – reasonable time period.<sup>70</sup> With regards to the second legal requirement, the Dutch Supreme Court established that the requirement that there is no or a lack of willingness to accept the necessary care also refers to the actual acceptance and effectiveness of that care. Meaning that if the parent exercising parental responsibility is insufficiently capable of effectively using the necessary care, the circumstance that the parent declared him or herself willing to accept care does not prevent the minor from being placed under supervision.<sup>71</sup> Hence, it pertains to the willingness as well as the actual ability to avert the developmental threat to the child. If a supervision order is imposed, an appointed guardian helps the parents to reverse the child's developmental threat. If necessary, the family guardian may give directions that the parent and child must follow.<sup>72</sup>

- *Out-of-home placement*

Simultaneously with a supervision order, an out-of-home placement can be ordered. In some situations, the threat to the child's well-being cannot be resolved whilst remaining at home, in such cases the judge may decide to place the child into public care. The child can then be placed in a foster family or (specialized) youth care facility. An out-of-home placement can be imposed when the abovementioned three legal requirements are met, and it is deemed necessary in the interest of the care and upbringing of the minor or to examine his mental or physical condition.<sup>73</sup> So, compared to a supervision order, during an out-of-home placement the parental responsibility is even further restricted as the parents can no longer decide where the child lives.

The most far-reaching form of an out-of-home placement is the placement in a closed youth care facility. According to the Youth Act,<sup>74</sup> a child can be placed into a closed youth care facility should they have severe developmental and parenting issues which hinder their development to adulthood. These severe issues require a more intensive form of youth care to enable the child to grow up safe and healthy, to become sufficiently resilient and to participate in society. Also, when the child avoids the mandatory youth care or is removed by others, a closed placement can be ordered by a judge. Placement in a closed youth care facility is not only an interference with family life (to which Article 8 ECHR applies), but also a deprivation

69 There is an overlap between what we refer to as 'harm' in the international framework and a 'developmental threat' in Dutch law. These terms can be used interchangeably.

70 Art. 1:255 CC.

71 Supreme Court 16 February 2018, ECLI:NL:HR:2018:218; art. 1:255 para. 1, under a CC.

72 This is called a written instruction (in Dutch *schriftelijke aanwijzing*). Art. 1:263 CC.

73 Art. 1:265b CC.

74 Art. 6.1.2 sub 2 Youth Act; M.R. Bruning and M.P. de Jong-de Kruijf, 'Van gesloten jeugdzorg naar gesloten jeugdhulp: de nieuwe regeling nader beschouwd', *Tijdschrift voor Familie-en Jeugdrecht* 2015 vol. 33, no. 6, p. 134-143.

of liberty, to which all the guarantees mentioned in Article 5 ECHR and Article 37 CRC apply. It is therefore a very serious measure.

- *Termination parental responsibility*

The last, and most far-reaching measure in the Dutch system is the termination of parental responsibility. In addition to meeting the abovementioned three requirements, it is possible that a judge finds that the child-rearing situation will not change within an acceptable time period. If there is no prospect that the parents are able or willing to resume the full care for their child, parental responsibility may be terminated.<sup>75</sup> This measure however, is not necessarily permanent as parental responsibility can be restored by a judge when such a restoration is in the best interest of the child.<sup>76</sup>

#### 4. Methodology

In order to establish the considered circumstances and motivations for imposing child protection measures in cases of children growing up with parents who adhere to a specific ideology, a systematic case law analysis was conducted. A systematic case law analysis needs to be conducted in a structured and transparent manner so that the approach can be repeated by other researchers.<sup>77</sup> In this paragraph we will discuss our approach. We will discuss the search method (para. 4.1), the selection of cases (para. 4.2), and the coding and analysis of the cases (para. 4.3).

##### 4.1 Search method

To date there has not been an abundance of Dutch radicalization cases, therefore the analysis also includes cases in which other convictions of parents, albeit strict religious or extremist, have consequences for the child(ren) in question and child protection measures might be necessary. We chose to compare children of parents with extremist beliefs to children of parents with strict religious beliefs for two reasons. First, we already found such cases during an initial search for extremism cases. This search, namely, also led to cases in which judges mentioned 'a man of extreme faith' and 'an extreme religious dominated vision of life'.<sup>78</sup> Second, in both types of cases, a judge essentially needs to make a decision about a child's well-being on the basis of the beliefs of the parents, and the manner in which they acted upon such beliefs. In addition, as was shown in paragraph 2, there is a broad spectrum of extremist beliefs. A number of the selected cases could potentially be placed on this spectrum due to conceptual overlaps. This makes these two groups of cases comparable for the purposes of this study.

75 Art. 1:266 CC.

76 Art. 1:277-1:278 CC.

77 M. Hall and R.F. Wright, 'Systematic Content Analysis of Judicial Opinions', *California Law Review* 2006 vol. 96, no. 1, p. 1-24.

78 Despite the fact that parents' beliefs in some cases may fall under the definition of extremist beliefs as provided in para. 2.1, we do keep these cases separate based on whether or not the judge considered the beliefs as extremist.



The search for Dutch case law was conducted through the Dutch digital database [rechtspraak.nl](https://rechtspraak.nl), and the final search was conducted on 16 September 2022. The search engine allowed for all fields of law other than family law to be excluded. No further restrictions were applied during the search. Search terms were various combinations of ‘child protection’, specific child protection measures such as ‘out-of-home placement’ and ‘supervision order’ and thematic concepts such as ‘radicalized’, ‘extremist’, ‘beliefs’, ‘ideology’, ‘Caliphate’ and ‘Jihad’, or variations of beliefs/religions such as ‘(strict) religious beliefs’, ‘Christian’, ‘Protestant’, ‘Catholic’, ‘Islam’, ‘Muslim’, ‘Jewish’, ‘Jehovah’ and ‘sect’ (for the complete search terms and number of hits see Appendix 1).<sup>79</sup> The search strings containing ‘ideology’ or ‘(strict) religious beliefs’ yielded the most results. Search terms containing variations of ‘extreme-right’, ‘extreme-left’ or names of known Dutch extremist groups yielded no results. However, such cases, if available, should also be found through more general search terms (*i.e.*, ‘extremist’ or ‘ideology’).

All search terms were put in different combinations and an asterisk symbol was added to individual terms to ensure that different variations of a term were also found. The search term *radica\** also provides hits that for example contain the words ‘radical’, ‘radicalized’ and ‘radicalization’.

It is important to note that this method of data collection has its flaws. First, judgments are not written for research purposes. This means that perhaps not all aspects of the decision-making process are written down. For this reason, we chose to focus on the considerations of judges, as these are available in the published judgments. The easy digital access is therefore an advantage of [rechtspraak.nl](https://rechtspraak.nl). Second, not all cases are published.<sup>80</sup> Therefore, the study does not reflect the total number of cases concerning children whose parents have extremist or strict religious beliefs. This means that we cannot say with certainty that there are no substantial differences between the published and unpublished cases. This calls for a nuanced interpretation of the results. However, due to the nature of these often newsworthy and/or controversial cases, we have reason to suspect that the majority (at least a fair representation) of these cases will be published on [rechtspraak.nl](https://rechtspraak.nl) due to their societal relevance.

#### 4.2 Selection of cases

Cases were included in the analysis if they concerned children of which at least one parent has extremist beliefs (*i.e.*, extremist beliefs are present in the home environment, not via friends at school) OR cases regarding strict (religious) convictions of parent(s).

Out of 664 hits, based on the inclusion criterion, 37 cases were included in the case law analysis (see Appendix 2 for a flow chart).

79 Other search terms that were used but provided no (new) relevant hits were ‘extreme right/far-right extremism’, ‘accelerationism’, ‘Scientology’, ‘conservative’, ‘fundamentalist’ and ‘foreign fighter’.

80 On [www.rechtspraak.nl/Uitspraken/paginas/selectiecriteria.aspx](https://www.rechtspraak.nl/Uitspraken/paginas/selectiecriteria.aspx) the selection criteria for publishing cases are explained (in Dutch). For example, cases are published if they are of societal relevance.

Dirksen, Ismaili, Rodermond, Bijleveld &amp; Antokolskaia

- *Description of selected cases*

Following the above, included cases can be structured in two categories: cases concerning children whose parents have extremist beliefs and cases concerning children whose parents have strict religious beliefs. The first category consists of nine cases published between 2013 and 2022. Essentially all cases in this category concerned extremist beliefs related to IS and jihadism. Details about the beliefs of the parent in one of the cases did not become clear, only that the father had radical beliefs which he tried to transfer to his son. The majority of the cases ( $n = 6$ ) involved suspected or attempted traveling of the parents to Syria or Iraq during the time of IS's Caliphate. The other cases involved a parent joining a terrorist organization ( $n = 1$ ), inciting a terrorist crime ( $n = 1$ ) and encouraging their child to use violence motivated by the parent's religious norms ( $n = 1$ ). The ages of the children ranged from newborn babies to sixteen-year-olds. Various child protection measures were imposed. In the largest proportion of cases an out-of-home placement ( $n = 6$ ) was issued, of which two placements in a closed youth care facility, followed by a supervision order ( $n = 3$ ). See Table 1 for which measures were requested by the CCPB and the subsequent decision of the judge. It is possible that in a case the CCPB requests a more severe measure while another (less severe) measure has already been imposed. In those situations a judge may reject the heavier measure while the previously imposed one continues. In Tables 1 and 2 for example, this situation becomes visible when the termination of parental responsibility was rejected, yet the (closed) out-of-home placement continued. It is not possible for a judge to impose a different measure than requested by the parties involved.

**Table 1** *Requested measures (CPM) and decisions in radicalization cases*

Number of cases	Requested CPM	Decision
3	Out-of-home placement	Supervision order
3	Out-of-home placement	Out-of-home placement
1	Closed out-of-home placement	Out-of-home placement
2	Termination of parental responsibility	(closed) out-of-home placement
Total		9

The second category of cases consists of 28 cases published between 1999 and 2022. The beliefs of the parents (and their actions based on their beliefs) varied widely. Examples are parents who harshly disciplined their children on the basis of their beliefs, who socially isolated their children, or denied medical treatment. The largest proportion were parents with various beliefs that can be subsumed under Christianity ( $n = 12$ ), followed by Islamic ( $n = 4$ ), Jehovah's Witness ( $n = 6$ ), Hindu ( $n = 1$ ), and Sinti ( $n = 1$ ). In a few cases, the beliefs of the parent did not become clear ( $n = 4$ ), for example where only a 'strict religious community' was mentioned. Similar to the extremism cases, the ages of the children ranged from newborn babies to sixteen-year-olds. In the majority of the cases an out-of-home placement

(n = 9) was issued, followed by a termination of parental responsibility (n = 5), and supervision orders (n = 2). In this category there was also a case in which no child protection measures were imposed (n = 1). There was also a separate set of cases (n = 11) in which a judge had to decide whether or not to give substitute consent for medical treatment (which parents denied on the basis of their beliefs). See Table 2 for which measures were requested by the CCPB and the subsequent decision of the judge.

**Table 2** Requested measures (CPM) and decisions in religious cases

Number of cases	Requested CPM	Decision
1	Out-of-home placement	None
2	Supervision order	Supervision order
8	Out-of-home placement	Out-of-home placement
1	Termination of parental responsibility	Out-of-home placement
5	Termination of parental responsibility	Termination of parental responsibility
4	Substitute permission	No
7	Substitute permission	Yes
Total		28

#### 4.3 Coding and analysis

The objectivity and replicability of the analysis was enhanced by coding, meaning attaching labels to text fragments, in this study, the cases.<sup>81</sup> The coding was conducted through the qualitative analysis software Atlas.ti (version 2022) and consisted of an inductive as well as a deductive element.<sup>82</sup> On the one hand, we had a list of predetermined codes prior to the coding process (deductive). Here, that list was established on the basis of literature and the legal framework and consisted of information about the (religious/extremist) convictions of the parent, differentiated in information given by the parents themselves, by extended family, by child protection agencies or the child. This distinction was made to assess which type of information judges take into consideration. Such codes were used for the entire judgment, the considerations of the judge were coded separately as 'considered circumstances' and 'CPM yes' or 'CPM no'. We did this to distinguish under which circumstances child protection measures (CPM) were or were not imposed. On the other hand, parts of the judgment that could not be labeled with the predetermined codes were labelled after reading (inductive). These predetermined codes were

81 See also L. Wijntjes, 'Het verrichten van een gestructureerde rechtspraakanalyse. De rol van excuses in de civiele rechtspraak en de medische tuchtrechtspraak', in: P. Verbruggen (ed.), *Methoden van systematische rechtspraakanalyse. Tussen juridische dogmatiek en data science*, Den Haag: Boom Juridisch 2021, p. 27-46.

82 T. Decorte and D. Zaitch, *Kwalitatieve methoden en technieken in de criminologie* (third edn.), Leuven: Acco 2016.

tested on ten cases to check whether the codes needed to be refined, modified, added or deleted.

The next step was to analyze the coded text fragments within the various codes. The analysis primarily focused on mapping out which factors judges include and weigh in their considerations. This means that we looked further into the ‘considered circumstances’ code to see whether we could identify certain factors in the considerations. We found several factors such as psychological well-being, physical well-being, relationship with parents, parenting skills, and financial situation. These factors were combined into two overarching factors: well-being and home situation.

## 5. Results

In this paragraph we will discuss how Dutch judges assess the aforementioned three legal requirements when deciding upon imposing child protection measures on children whose parents have extremist or strict religious beliefs. In short, these requirements were the threat to the development of the child (para. 5.1), the willingness of parents to cooperate with the care that is necessary to avert that threat (para. 5.2) and the reasonable time period in which parents should be able to resume the care of the children themselves. The last legal requirement, however, does not play a meaningful role in cases concerning strict or extreme beliefs and therefore will not be discussed in a separate section.

Within paragraphs 5.1 and 5.2 the two abovementioned categories of cases will be discussed. Hence, first the cases involving children whose parents have extremist beliefs and subsequently the cases concerning children whose parents have strict religious beliefs. The discussion of cases will be structured on a range from parents acting on their beliefs to cases in which only the parents’ beliefs are central in establishing whether a child protection measure should be imposed.

### 5.1 *Developmental threat*

When examining a threat to the development of the child, we found that courts generally take two factors into consideration. These factors are the well-being of the child and the home situation of the child. Well-being in turn can also be distinguished in different categories. Where it concerns well-being, the court considers factors that are child specific, such as physical well-being (withholding medical care, safety due to traveling to an active warzone, and physical abuse/caning), but also psychological well-being (anxiety, severe stress, depression and indoctrination) and social well-being (social isolation, and performance at school). Home situation is a more external factor related to the situation surrounding the child such as the relationship with the parents, parenting skills, the financial situation of the family, and home schooling. These factors will be discussed hereafter.

- *Well-being (extremist cases)*

As mentioned, a distinction can be made between cases in which parents have acted upon their beliefs or where solely the belief potentially has consequences for the well-being of the child. Cases where parents have acted upon their beliefs are cases in which parents have travelled to IS territory but also cases in which parents are convicted for a terrorist crime.

In all cases in which a travel to Syria was planned or attempted, the courts had similar concerns regarding well-being, namely concerns for the safety of the child. In each of the cases it was discussed that, should the parents succeed in traveling to IS-territory, there would be ‘immediate and severe danger’ to the child’s well-being and possible fatal consequences due to the particularly dangerous environment.<sup>83</sup> It can be assumed that this concerns amongst others physical well-being. In a few cases such concerns for the child’s safety and well-being were not further elaborated on; in others the threat to the well-being of the child did become more concrete. Those examples will be discussed below.

In one of those cases, there was concrete evidence from the General Intelligence and Security Service (GISS)<sup>84</sup> that a mother wanted to travel to Syria with her two children.<sup>85</sup> In addition to the previously discussed safety concerns (*i.e.*, physical well-being), there were concerns about the children’s psychological well-being as they struggled with anxiety. The eldest child explained to the court that he was afraid that their mother would take them to Syria. In light of this these concerns, the court ruled that an out-of-home placement, or in this case the prolongation of the out-of-home placement imposed by the lower court due to similar concerns, was necessary so that the children could grow up in a stable situation in which their safety could be guaranteed.<sup>86</sup> In a similar case, the court also based its decision on objective information pointing towards an attempt to travel to Syria.<sup>87</sup> The information from the police, as relied upon by the court, concerned both the physical and psychological well-being of the eldest child. He stayed with an unknown family in Brussels for a period of time, during which he was allegedly subjected to physical and mental abuse. Which role his parents played in this remained unclear, nevertheless the investigations by the Belgian police suggested that he was being ‘trained’ for something. However, in contrast to the previous cases, this judge decided there was no need to issue an out-of-home placement at that time, as the parents had indicated that they wished to travel back to the Netherlands with their children and were willing to cooperate with the Child Care and Protection Board (CCPB). The willingness of the parents to cooperate with the necessary care seemed to be the deciding factor between a supervision order and

83 Court Central Netherlands 29 August 2014, ECLI:NL:RBMNE:2014:3986; Court of Appeal The Hague 20 April 2016, ECLI:NL:GHDHA:2016:1237; Court The Hague 8 September 2014, ECLI:NL:RBDHA:2014:11272; Court Gelderland 15 August 2013, ECLI:NL:RBGEL:2013:4112 and Court Gelderland 2 September 2013, ECLI:NL:RBGEL:2013:4113.

84 In Dutch: *de Algemene Inlichtingen- en Veiligheidsdienst*. For this article we use the English translation (The General Intelligence and Security Service) and abbreviation (GISS).

85 Court of Appeal The Hague 20 April 2016, ECLI:NL:GHDHA:2016:1237.

86 See also Court Central Netherlands 29 August 2014, ECLI:NL:RBMNE:2014:3986.

87 Court The Hague 8 September 2014, ECLI:NL:RBDHA:2014:11272.

an out-of-home placement in these cases. This will be further discussed in paragraph 5.2.

An example of a case where parents were convicted or suspected of a terrorist crime, is a case that concerned three children whose mother was arrested for inciting a terrorist crime.<sup>88</sup> In this (appeal) case, the judge decided that a previously issued emergency out-of-home placement remained necessary. The threat to the children's well-being had not been averted. Moreover, during the appeal it came to light that, in terms of their psychological well-being at the time, the children were anxious after their initial placement into public care and expressed themselves very negatively and threateningly about non-Muslims and 'infidels'. However, after receiving treatment, the children were calmer and doing well again, which according to the judge, pointed towards the necessity of the imposed out-of-home placement. Another case concerned a father who had allegedly joined a terrorist group.<sup>89</sup> In this case, the judge established a developmental threat to the children as they had a burdened history.<sup>90</sup> In terms of psychological well-being they showed signs of trauma such as night terrors, behavioral issues and separation issues from their mother. In addition, the judge stated that their father potentially joining a terrorist organization also led to a developmental threat for the children. However, what this developmental threat entailed in terms of their well-being was not explained further. The judge did order an ideological assessment for the two eldest children (eight and six years old). Why the assessment was deemed necessary for these two children was, again, not mentioned in the judgment. A supervision order was issued as the ideological assessment could be conducted in the home situation and, similar to the previously discussed case in which a supervision order was imposed, the other deciding factor was the willingness of the mother to cooperate with necessary care (see para. 5.2).

The only radicalization case that did not revolve around parents acting upon their beliefs is the one mentioned in the introduction concerning a newborn baby.<sup>91</sup> Whereas the CCPB argued that the mother's ideological beliefs were reason for concern, the judge decided that an out-of-home placement was not necessary. In terms of physical and psychological well-being, the court held that radical thoughts and beliefs do not in themselves pose a threat to the development of a newborn baby. The judge did note that this could change once concrete indications of such threats were to arise, yet did not set out what such indications would look like. According to the judge, the CCPB did not sufficiently argue in which manner the physical and psychological well-being of the child would be harmed by the beliefs of the mother. An important factor, however, was that the child was already placed

88 Court of Appeal Amsterdam 10 March 2020, ECLI:NL:GHAMS:2020:837.

89 Court Rotterdam 29 April 2021, ECLI:NL:RBROT:2021:5433. In the consideration of the judge it was mentioned that means that the residency permit of the mother and children is uncertain. However, how long they have been in the Netherlands and where they are from remains unknown.

90 More details of their history are not provided in the judgment.

91 Court Gelderland 14 May 2020, ECLI:NL:RBGEL:2020:2851.

under supervision.<sup>92</sup> This meant that the well-being of the child could be monitored closely, and the CCPB was able to intervene where necessary.

To summarize, these cases show that – in line with the expectations based on the international framework – the extremist beliefs of parents do not lead to a developmental threat as such. According to these cases, they only become harmful when these beliefs coincide with concrete actions that could harm the child, such as traveling to Syria to join IS or inciting terrorist acts. Generally, in terms of well-being, an attempt to travel to IS territory is sufficient to establish a threat to the physical well-being of a child. Other threats can be more psychological in nature such as anxiety due to fear of traveling. However, the considerations mostly focus on the safety aspect (*i.e.*, physical well-being). Having parents who are convicted for or suspected of a crime related to terrorism can also be reason to establish a developmental threat in terms of well-being. For example, when children exhibit anxiety and make concerning statements about ‘infidels’. For some children an ideological assessment was deemed necessary, from which can be assumed that the judge had reason to believe that the beliefs of the parents were transferred to their children. However, which measures should be imposed also depends on the home situation of the child and the willingness of parents to cooperate with necessary care. This will be further discussed in the following paragraphs.

- *Well-being (religious cases)*

In religious cases we have similarly made a distinction between cases in which parents have acted upon their beliefs or where solely the belief potentially has consequences for the well-being of the child. Cases where parents have acted upon their beliefs are cases in which parents caned their children, religiously indoctrinated their children, socially isolated them or withheld medical care.

A case in which parents acted upon ‘their own found’ religious beliefs, is a case in which four children were systematically being physically and psychologically abused by their parents.<sup>93</sup> The judge established a developmental threat and considered the following. In terms of physical well-being, the children were abused as their parents corporally punished<sup>94</sup> them by caning and forced the children to fast for certain periods of time, causing them to arrive at school hungry. For these parents, it was not Dutch law, in which physical abuse is punishable, but their faith that guided them. The judge considered the parents withholding medical care<sup>95</sup> as another form of physical abuse. In terms of psychological well-being, the children experienced anxiety due to the unpredictable actions of their parents. In addition, the judge considered the parents religiously indoctrinating their children as a serious form of psychological abuse as well. Child abuse could also be established

92 The reasoning for why the baby was already placed under supervision did not become clear from the judgment. It is known, however, that the mother has previously traveled to IS territory.

93 Court North Netherlands 27 January 2022, ECLI:NL:RBNNE:2022:173 and Court North Netherlands 19 October 2021, ECLI:NL:RBNNE:2021:4450.

94 See also Court Groningen 28 October 2009, ECLI:NL:RBGRO:2009:BK2838.

95 See also Court of Appeal Arnhem-Leeuwarden 7 November 2013, ECLI:NL:GHARL:2013:8464. In this case, the parents tried to convince one of the children to not take necessary medication. Instead, the parents sent the child into ‘isolation’.

due to the children witnessing domestic abuse. According to the judge, such experiences form a threat to the children's social-emotional development as their feeling of safety is impaired and it obstructs the ability to learn how to express their emotions in an adequate and socially accepted manner. The judge stated that individuals have the right to freely profess their religion or philosophy of life, but that this freedom does not go so far that children may be maltreated in any way on the basis of this belief. The parents also showed no willingness to change their behavior. Therefore, parental responsibility was terminated. In another case in which parents corporally punished their children, the judge also established a developmental threat due to harm to the children's physical well-being.<sup>96</sup> However, a supervision order was deemed sufficient as the home situation of the children was considered a positive factor (see next paragraph 'home situation').

Another manner in which parents possibly harm the well-being of their child is social isolation. Here, the situation in which a child grew up (a strict religious community) was deemed a developmental threat in terms of well-being.<sup>97</sup> The judge considered that in comparison to other children of his age, the child showed a developmental delay. The delay was previously established by the involved Youth Protection Agency and his caregivers in specialized care facility. According to the judge, it is important that children are able to develop age appropriately.<sup>98</sup> For their social-emotional development it is important to interact with peers. This was visible in this case as the child's limited contact to peers resulted in him having trouble playing with other children. He hurt them without cause, which resulted in concerns about possible traumas, attachment issues, and the development of his conscience. It can be assumed that this concerns not only his social, but also his psychological well-being. For these reasons, the judge considered it necessary to continue the specialized care, and his placement in a specialized care facility was extended. In a similar case, the judge even terminated the parental responsibility as the parents placed themselves outside of western society and refused to enroll their child in a primary school, thereby isolating their child from society.<sup>99</sup> The parents failed to see that their actions were harmful and posed a serious threat to their daughter's well-being and social-emotional development. According to the judge, the parents' actions, based on a view of life that is dominated by extreme religious beliefs, made them unable to put the best interests of their child first. Here, the judge stressed that this decision was not based on the religious beliefs themselves, but on the way in which the parents put their faith into practice.

An interesting case is one of parents who did not act or perhaps acted by choosing to abstain from acting due to their religious convictions.<sup>100</sup> These parents placed the responsibility for making decisions regarding their children's well-being

96 Court Utrecht 8 January 2010, ECLI:NL:RBUTR:2010:BK8714.

97 Court of Appeal Arnhem-Leeuwarden 11 November 2021, ECLI:NL:GHARL:2021:10515.

98 See also Court of Appeal Amsterdam 11 March 2014, ECLI:NL:GHAMS:2014:1504.

99 Court of Appeal Arnhem-Leeuwarden 21 September 2017, ECLI:NL:GHARL:2017:8301.

100 Court 's-Gravenhage 3 June 2009, ECLI:NL:RBSGR:2009:BJ7665, Court 's-Gravenhage 13 April 2010, ECLI:NL:RBSGR:2010:BN8507 and Court of Appeal 's-Gravenhage 4 August 2010, ECLI:NL:GHSGR:2010:BN9246. Various cases regarding the same family.



entirely outside themselves, and with their faith in the Lord.<sup>101</sup> This meant these parents allowed their actions to be determined by the path that God showed them. According to the judge, a threat to the children's development followed from harm to the children's physical (including medical) and psychological well-being. In terms of physical well-being, the mother did not have enough breast milk to feed her baby, yet according to the parents, they were guided by God not to give the baby supplementary food. This resulted in the baby being malnourished and consequently not growing properly. The other children also received too little food. If the children were ill, whether they would visit a doctor or let the illness run its course depended on what their God told the parents to do. In addition, none of the children had health insurance. An orthopedagogic expert report showed, in terms of psychological well-being, that the children's emotional development had been harmed by their parents' beliefs in general and more specifically by the fact that the parents refused to visit them after their out-of-home placement. According to the judge, the parents systematically put the interests of God before the interests of their children. Therefore, the well-being of the children could not be guaranteed, and the out-of-home placement was prolonged to prevent further harm to the children's social-emotional development. Moreover, concerning the youngest child, the judge terminated their parental responsibility.<sup>102</sup> Her parents' actions, or rather inaction, caused a life-threatening situation for her. According to the court, the parents took an unacceptable risk. Despite all their children having been removed from the home, the parents showed no willingness to change. In light of this, the court found that the parents had not been able to exercise their parental responsibility. Interestingly, the eldest child of the family appealed and requested to terminate his out-of-home placement as he believed that he was in fact not threatened in his development.<sup>103</sup> His grandfather testified that he understood that the child wanted to return to his parents but could not support this wish due to the parents' behavior. The court considered that for this child there was no threat of malnourishment (physical well-being), he performed well in school, and he felt supported and loved by his parents. In addition, he turned sixteen years old, which meant that he could stand up for himself, and that he could now decide about medical treatment for himself should his parents refuse. In that regard there was also no threat to his health and therefore there was no ground for an out-of-home placement.

To summarize, the discussed cases showed that when parents' beliefs result in actions such as caning or other forms of corporal punishment, courts generally considered this harmful to not only the physical but also social-emotional

101 There have been other cases such as this one where the parents systematically put the interests of their own God before the interests of their children by acting based on their 'extreme religious dominated vision of life'. See, for example, Court of Appeal Arnhem-Leeuwarden 21 September 2017, ECLI:NL:GHARL:2017:8301.

102 Court of Appeal 's-Gravenhage 4 August 2010, ECLI:NL:GHSGR:2010:BN9246.

103 Court of Appeal 's-Gravenhage 10 June 2009, ECLI:NL:GHSGR:2009:BJ5115. In this case, the judge did not explicitly mention the transmission of (religious) beliefs from parent to child. However, it has become clear that the minor shares his parents' views. This may indirectly point to intergenerational transmission of those beliefs.

well-being of the children. Parents are free to believe, yet this does not go so far that they can harm their child. Religiously indoctrinating children was also considered a developmental threat to children by one of the judges as well as actions that result in social isolation for children. Once a child is not able to develop age appropriately due to lack of contact with others, this was considered reason to impose a measure. On the contrary, to fully abstain from acting due to religious beliefs can also constitute a developmental threat due to a threat to essentially all forms of well-being, as was shown above.

The next group of cases concern substitute permission by courts for medical treatment should parents withhold consent.<sup>104</sup> These cases do not concern child protection measures but do entail a limitation of parental responsibility. This can be deemed necessary if – just as with child protection measures – the exercise of parental responsibility leads to harm to their child, *i.e.* the physical/medical well-being of children or even life threatening situations due to (religious) beliefs. We found three types of such cases, namely refusal of blood transfusions, refusal of vaccinations and circumcision on the basis of the parents' beliefs. In these cases, judges weigh the medical necessity against the religious freedom/beliefs of parents. Cases in which a blood transfusion was refused because the parents (and often the children) were Jehovah's Witnesses, showed two elements in the court's consideration.<sup>105</sup> The first is whether the child is capable<sup>106</sup> to make its own decision about administering blood products; this depends on the child's level of maturity, which is based in part on the child's age.<sup>107</sup> The second is whether or not the situation is life-threatening. Children under twelve are generally not considered capable to make such decisions. Therefore, in those cases it usually boils down to

104 Parents charged with parental responsibility over their child have the authority to decide what medical care the child will receive. This may result in parents withholding consent to certain medical procedures based on religious or other convictions. However, this freedom to choose, just as the freedom to raise their child as they see fit, has a limit and it might be necessary to intervene should withholding or applying care become harmful to the child. If parents do not consent to medical treatment for children under twelve, the court may grant substitute consent. This can also be done if a child over twelve is unable to reasonably represent his interests as far as medical treatment is concerned. In such a case, both the health risks to the child if treatment does not take place and the motives of the parents are considered. Art. 1:265h CC. Minors of sixteen and older can decide independently on medical treatments. See the Medical Treatment Agreement Act, art. 7:446-7:468 CC.

105 Court of Appeal Amsterdam 31 August 2010, ECLI:NL:GHAMS:2010:BN7966, Court Rotterdam 3 November 2020, ECLI:NL:RBROT:2020:10737, Court of Appeal The Hague 15 July 2020, ECLI:NL:GHDHA:2020:2365, Court of Appeal 's-Gravenhage 12 February 1999, ECLI:NL:GHSGR:1999:AB0949 and Court Arnhem 29 November 2012, ECLI:NL:RBARN:2012:BY7699.

106 Art. 1:265h sub 2 CC: Substitute permission for medical treatment of a minor above the age of twelve is only possible when the minor cannot be considered capable of a reasonable appreciation of their own interests. This choice made by legislators to grant judicious patients of twelve years and older the right to decide on their treatment even in life-threatening situations implies that it must then also be respected that that this decision is in principle made by a child of that age themselves. See Court of Appeal Amsterdam 31 August 2010, ECLI:NL:GHAMS:2010:BN7966.

107 These distinctions based on aged are derived from the Dutch Civil Code, see the Medical Treatment Agreement Act, Art. 7:446-7:468 CC.

the second element.<sup>108</sup> Children between twelve and sixteen years old can be considered capable to make their own decision. If a court has established that this is the case, they may choose to refuse blood transfusion. An example can be found in a case wherein a judge considered that a fifteen-year-old boy showed an age-appropriate psychological development, as a result of which he was not yet able to see himself completely detached from his parents, the parental home and his religious community. He exhibited such loyalty to his parents and their religious community that he could not be considered quite capable of separating his own thoughts from those of others. Moreover, he was in a life-threatening situation which made the blood transfusion essential.<sup>109</sup> Minors of sixteen and older are generally considered capable. The potential influence of the parents was considered important in the case concerning the fifteen-year-old boy yet this changes, based on the Medical Treatment Agreement Act, in the considerations regarding a sixteen-year-old girl. Here, the judge considered as follows: ‘Her right to choose or not choose a blood transfusion flows directly from the right to self-determination. That she may be influenced by the mother (and stepfather) does not lead to a different conclusion.’<sup>110</sup>

In cases where the court must decide whether or not to give substitute permission to vaccinate a child, the medical well-being of the child is weighed against the beliefs of the parent.<sup>111</sup> For example, the Hague Court of Appeal saw a case in which a child had received most of the Dutch National Vaccination Program (NVP)<sup>112</sup> vaccinations. However, the mother now refused the pneumococcal vaccination for her son. The mother argued that she refused the vaccination because of her religious beliefs, but according to the court the mother had not been able to provide sufficient explanation as to why her beliefs would be reason to refuse the vaccination. During the hearing it came to light that the mother’s refusal was related to her belief that there would be tracers in the vaccine. For that reason, it was held that the child’s interest in growing up safely and healthy outweighed the mother’s (religious)

108 Court of Appeal ‘s-Gravenhage 12 February 1999, ECLI:NL:GHSGR:1999:AB0949; Court Arnhem 29 November 2012, ECLI:NL:RBARN:2012:BY7699.

109 Court of Appeal Amsterdam 31 August 2010, ECLI:NL:GHAMS:2010:BN7966, see also Court Rotterdam 3 November 2020, ECLI:NL:RBROT:2020:10737.

110 Court of Appeal The Hague 15 July 2020, ECLI:NL:GHDHA:2020:2365. See also Court of Appeal Amsterdam 31 August 2010, ECLI:NL:GHAMS:2010:BN7966. Also in this case, the judge did not explicitly mention the transmission of (religious) beliefs from parent to child. However, it has become clear that the minor shares her parents’ views. This may indirectly point to intergenerational transmission of those beliefs.

111 Court of Appeal ‘s-Gravenhage 26 January 2010, ECLI:NL:GHSGR:2010:BL0931, Court of Appeal Arnhem-Leeuwarden 23 February 2021, ECLI:NL:GHARL:2021:1728, Court of Appeal Amsterdam 23 July 2019, ECLI:NL:GHAMS:2019:2729 and Court Rotterdam 14 January 2019, ECLI:NL:RBROT:2019:693.

112 When looking at vaccination cases, it is important to know that the Netherlands has a National Vaccination Program (NVP). This program is based on scientific research and aims to prevent the development of a number of serious diseases through vaccinations. In principle, the best interest of a child is served by protection against infectious diseases. The NVP is not mandatory. Court of Appeal Amsterdam 23 July 2019, ECLI:NL:GHAMS:2019:2729.

beliefs.<sup>113</sup> The court thereto cited Article 3(1) CRC<sup>114</sup> which holds the principle that the best interests of the child are always the primary consideration.

Finally, there were two cases concerning circumcision. These cases seem to focus on the child's social rather than medical well-being. One case involved a dispute between parents and the other between a parent and foster parents. The parents argued that not circumcising their child would socially isolate them from their community. In both cases, the judges ruled that circumcision was not medically necessary. The children were growing up in the Netherlands and would therefore not be socially isolated if they were not circumcised (this was the mother's concern).<sup>115</sup> In one case, the minor was growing up in a Dutch foster family which is why circumcision would actually make him different from the other boys in the foster family.<sup>116</sup> It is also important that although circumcision of five-year-old boys is common in Islam, the Muslim faith does not command circumcision at that age.<sup>117</sup> In both cases, the court held that, from the minor's point of view, circumcision was not considered in their best interest since it is an intervention that is (generally) not medically necessary and, moreover, irreversible. In both cases, the judge noted that the children could always have the operation performed at a time when they are able to decide for themselves.<sup>118</sup>

Hence, from the cases related to substitute permission it follows that judges in these cases generally consider the degrees of medical necessity, the choice of the children themselves and the beliefs of the parents. The religious beliefs of parents that may result in them refusing medical treatments such as blood transfusions, vaccinations and circumcisions for their children are important considerations by judges, but such beliefs cannot weigh heavier than the best interest of children. In these cases, those interests involve their health in life-threatening situations, protection from diseases and, where it concerns non-medically necessary treatments, the possibility to freely decide in the future.

Lastly, cases wherein solely the religious beliefs of the parents were at issue, concerned children who were unable to be themselves due to the convictions of their parents. This can take various forms. For example, in one case a girl's sexuality was not accepted due to her parents' religion.<sup>119</sup> The judge established a developmental threat as she experienced a lot of stress. A psychiatrist established that due to her stress levels, she developed epileptic seizures. In addition, she started harming herself (automutilation), pointing towards a threat to both her psychological as well as physical well-being. The judge therefore issued an

113 Court of Appeal 's-Gravenhage 26 January 2010, ECLI:NL:GHSGR:2010:BL0931. See also Court of Appeal Arnhem-Leeuwarden 23 February 2021, ECLI:NL:GHARL:2021:1728.

114 See also Court of Appeal Amsterdam 23 July 2019, ECLI:NL:GHAMS:2019:2729 and Court Rotterdam 14 January 2019, ECLI:NL:RBROT:2019:693.

115 Court of Appeal 's-Hertogenbosch 26 November 2002, ECLI:NL:GHSHE:2002:AF2955; Court Zutphen 31 July 2007, ECLI:NL:RBZUT:2007:BB0833.

116 Court Zutphen 31 July 2007, ECLI:NL:RBZUT:2007:BB0833.

117 Court of Appeal 's-Hertogenbosch 26 November 2002, ECLI:NL:GHSHE:2002:AF2955.

118 Court of Appeal 's-Hertogenbosch 26 November 2002, ECLI:NL:GHSHE:2002:AF2955; Court Zutphen 31 July 2007, ECLI:NL:RBZUT:2007:BB0833.

119 Court Rotterdam 21 May 2021, ECLI:NL:RBROT:2021:5087; Court Rotterdam 28 January 2022, ECLI:NL:RBROT:2022:2350.

out-of-home placement.<sup>120</sup> Another case concerned children who felt conflicted between the religion/culture of their parents and the society they lived in.<sup>121</sup> Their father was characterized as a dominant man who left little space for the children's own identity. The judge established a developmental threat due to the children feeling conflicted and their inability to form their own identity. A supervision order was imposed in order to prevent the children and their parents growing further apart, which could then also be considered a developmental threat according to the judge. However, an out-of-home placement was deemed necessary for the eldest daughter as she was unable to grow up in a manner that was psychologically healthy. Hence, in both of these cases it was not the beliefs as such that formed the developmental threat, but the environment shaped by these beliefs that negatively influenced the children

Overall, these religious cases showed a wide variety of parents acting upon their beliefs. This has also resulted in a wider variety of threats to the well-being of their children (such as physical abuse, anxiety, not developing age appropriately, not receiving medical care). Similar to the radicalization cases, these cases show that the strict religious beliefs of parents do not lead to a developmental threat as such. Even though the actions resulting from their beliefs varied, for example corporal punishment and social isolation compared to traveling abroad to join IS, these cases also showed serious consequences for the children in terms of well-being. Here, developmental threats were established due to physical abuse, anxiety, severe stress, a lack of medical care, and developmental delays in terms of social-emotional as well as educational development.

- *Home situation (extremism cases)*

In determining whether a developmental threat exists, and which measure should be imposed, the home situation of the child is also considered. The home situation of the child plays a role in two ways. First, it can play a role in establishing a developmental threat. In these cases the home situation is generally regarded as negative or unsafe. Secondly, the home situation is assessed in order to decide if a less intrusive measure will suffice. In these cases the home situation is generally regarded as positive and warm. As mentioned, the home situation is a more external factor related to the situation surrounding the child such as the relationship with the parents, the parenting skills, the financial situation of the family, and home schooling. Not all cases in which parents have acted upon their beliefs provide much detail about the situation surrounding the child, only cases in which sufficient information is available will be discussed.<sup>122</sup>

Generally, in cases in which a travel to Syria was planned or attempted, the main consideration of the judges concerned the question of whether the child's safety

120 For this case, it is important to note that the strained relationship with her parents and the tense home situation resulting from the parents' beliefs are the reason for imposing a measure, not the beliefs of the parents as such.

121 Court Groningen 12 August 2010, ECLI:NL:RBGRO:2010:BN5853.

122 Court Central Netherlands 29 August 2014, ECLI:NL:RBMNE:2014:3986; Court The Hague 8 September 2014, ECLI:NL:RBDHA:2014:11272 and Court North Netherlands 26 June 2022, ECLI:NL:RBNNE:2022:2143 lacked sufficient information about the home situation.

could be adequately guaranteed in the home situation.<sup>123</sup> However, cases in which other concerns than the child's safety were discussed more elaborately, showed that there were often more issues at play besides parents acting upon their beliefs. For example, in a potential travel case, there were serious concerns about the home situation.<sup>124</sup> The eldest child had difficulties with his mother's new partner. There were suspicions that the mother radicalized through her new husbands' radical teachings and that the children were subjected to this as well. This means that the children grew up in a home situation in which extremist beliefs potentially played a prominent role. During the trial, it became clear that the stepfather was trying to convince the mother to leave the Netherlands, but she only wanted to do so if she could take her children with her. In addition, the mother was experiencing severe divorce issues with the children's father. These tensions led to loyalty issues for the children, which came to light because the minors' school results had suffered during that period. Another home situation in which extremist beliefs played a prominent role was in the case in which a mother encouraged her children to travel to IS territory.<sup>125</sup> In this case, there were concrete indications that a minor and his (half)brother were planning to travel to Syria, following another brother who had done so already. There was reliable information – from the GISS, the National Coordinator for Security and Counterterrorism and the police, which was confirmed by the national prosecutor of counterterrorism – that the mother encouraged her sons to go fight in Syria and indications that she later wanted to join them. In light of this, the court decided there were sufficient grounds for a preliminary placement in a closed youth care facility for a period of four weeks. However, according to the court more research needed to be done before definitive care measures could be imposed. The judge found it important that the CCPB further investigated the questions regarding the brother who supposedly already traveled to Syria, the possible travel plans of the mother and whether there were more indications that the minor had plans to travel to Syria. In the follow-up case, the request to extend the placement in a closed youth care facility for another three months was rejected. The court considered that a closed placement is a far-reaching measure that is not meant as an instrument of criminal law, but can only be imposed when there are serious issues related to parenting or the child's development that require treatment. The brief investigation of the CCPB revealed concerns that could be addressed within the framework of the supervision order, which meant that a closed placement was no longer justified. In addition, the judge stated that should the minor attempt to travel abroad, the GISS, the Public Prosecution Service and the police proved to be able to act adequately against such intentions. In the last case, the children were present at their mother's arrest for inciting a terrorist

123 Court Central Netherlands 29 August 2014, ECLI:NL:RBMNE:2014:3986; Court of Appeal The Hague 20 April 2016, ECLI:NL:GHDHA:2016:1237; Court The Hague 8 September 2014, ECLI:NL:RBDHA:2014:11272; Court Gelderland 15 August 2013, ECLI:NL:RBGEL:2013:4112 and Court Gelderland 2 September 2013, ECLI:NL:RBGEL:2013:4113.

124 Court of Appeal The Hague 20 April 2016, ECLI:NL:GHDHA:2016:1237.

125 Court Gelderland 15 August 2013, ECLI:NL:RBGEL:2013:4112 and Court Gelderland 2 September 2013, ECLI:NL:RBGEL:2013:4113.

crime, which was traumatizing for them.<sup>126</sup> In addition, there were also allegations of domestic abuse, which means that not only the extremist beliefs of the mother, but also other tensions were present in the home situation.<sup>127</sup> In the majority of these cases, along with the well-being concerns, a developmental threat was established and the children were placed out-of-home.

The abovementioned cases show that it is not always possible to avert a developmental threat in the home situation and that out-of-home placements are at times necessary. However, two cases show how sometimes a supervision order (in combination with cooperation with youth care, see para. 5.2) can be sufficient if the home situation is deemed safe enough. In the case of a father who allegedly joined a terrorist group, the judge established a developmental threat on the basis of the well-being of the children, but did not deem an out-of-home placement necessary (yet) on the basis of the home situation.<sup>128</sup> Despite some concerns regarding the relationship with the mother, the judge did not see acute indications of an unsafe situation. The mother's parenting skills were deemed sufficient and the Certified Institution described her as a loving and caring mother. Similar considerations were found in the only radicalization case that did not revolve around parents acting upon their beliefs.<sup>129</sup> In this case the judge also found that the mother's parenting skills were sufficient. In addition, the National Support Center for Extremism expressed confidence in the home situation, since the mother had a stable residence with her own mother and her partner. An important note in this case is that the mother had traveled to IS territory in the past, which was why the National Support Center was already involved. Crucially, the mother had been suspended as part of the criminal process with strict conditions including electronic monitoring and a location order as well as cooperating in a personality assessment and interviews with a theological expert.

To conclude, the home situation can play a role in the court's consideration in several ways. On the one hand, when a home situation has a negative impact on a child this contributes to establishing a developmental threat. For example, cases of parents attempting to travel to IS territory and completely removing their child from their home situation. By doing so, the safety of the child could no longer be guaranteed. Or if parents create an otherwise unsafe situation by committing a crime inspired by their beliefs or when there are other issues present in the home situation, such as domestic abuse. On the other hand, parents who are able to shape a loving home situation and have sufficient parenting skills may actually help reverse the developmental threat. In such cases, a lighter measure, such as a supervision order, may suffice.

126 Court of Appeal Amsterdam 10 March 2020, ECLI:NL:GHAMS:2020:837. The family was already on the radar of the Child Care and Protection Board due to previous concerns about the mother's possible radicalization. At the time, however, there were no acute concerns. Later on the mother was arrested for inciting a terrorist crime.

127 During the cases it did not become clear whether these claims of sexual abuse and domestic violence were true. The father requested that the police look into these claims, but those results remain unknown.

128 Court Rotterdam 29 April 2021, ECLI:NL:RBROT:2021:5433.

129 Court Gelderland 14 May 2020, ECLI:NL:RBGEL:2020:2851.

Dirksen, Ismaili, Rodermond, Bijleveld & Antokolskaia

- *Home situation (religious cases)*

In religious cases, the home situation plays an identical role as in the extremism cases. As mentioned, the home situation can play a role in establishing a developmental threat and it can be decisive in which measure should be imposed. For example, in a case where a care order was imposed after parents requested and obtained exemption from the Compulsory Education Act for their children based on their beliefs as Seventh Day Adventists (note: the case only concerned the eldest boy),<sup>130</sup> the parents were allowed to home school their children and did so for several years. However, the judge in this case established a developmental threat on the basis of the home situation and schooling. The judge considered that the boy experienced ‘a severe crisis in the home situation due to parents’ outlook on life and due to their religious beliefs.’ He did not agree with his parents’ convictions, ran away from home several times and expressed the wish to attend a regular school.<sup>131</sup> Next to his parents’ different views on life and home schooling, the temperament of the father was reason for concern as this raised the stress levels and tensions in the family. The judge imposed an out-of-home placement and stated that it was necessary to create a calmer situation for the child. This case showed how the home situation, along with well-being concerns, can form a developmental threat. However, it also showed that there are also other issues, next to actions based on beliefs, in the home situations of these children. In another case, parents withheld children from school without an exemption from the Compulsory Education Act.<sup>132</sup> Moreover, they did not home school the children. Here, the judge considered that this left the children with a significant learning deficit. The parents also did not take any responsibility for the children materially (the CCPB had to collect clothing for the children). The parents’ pedagogical choices in combination with the threats to the children’s well-being were reason for serious concern. Due to this, the judge terminated the parental responsibility and stated that the parents’ religious beliefs in no way justified such neglect. Another manner in which the home situation can form a developmental threat are the tensions between a child and their parents due to their beliefs, which puts a strain on their relationship,<sup>133</sup> for example parents who did not accept their

130 Court Groningen 28 October 2009, ECLI:NL:RBGRO:2009:BK2838

131 The child did not feel challenged whilst being home schooled (only for 1,5 hours a day). After some tests, it was established that he was ‘highly gifted’. In a different case, a judge provided substitute consent for him to attend a regular school He was accepted into the *Gymnasium* (highest Dutch high school education level). He was performing well. However, with regards to his age he should have been in his third year of school, yet he was still in his first year. This means that he was behind in his educational development due to the home schooling (in the manner his parents provided). This does not mean that all home schooling leads to a developmental threat, but there are cases in which it leads to a developmental delay or even social isolation.

132 Court of Appeal Arnhem-Leeuwarden 7 November 2013, ECLI:NL:GHARL:2013:8464. See also Court Overijssel 12 March 2015, ECLI:NL:RBOVE:2015:1549.

133 For other examples of strained relationships, see also Court of Appeal Arnhem-Leeuwarden 11 November 2021, ECLI:NL:GHARL:2021:10515 and Court of Appeal Amsterdam 11 March 2014, ECLI:NL:GHAMS:2014:1504.



daughter's sexuality based on their religious convictions.<sup>134</sup> In another case, the relationship between parents and their children deteriorated as the mother exhibited unstable behavior and there was also a history of domestic violence and neglect.<sup>135</sup> More specifically, the parents shaped their home situation in a manner that was incomprehensible for children, and, according to the judge, religiously indoctrinated their children (see para. 'well-being'). This made the relationship with their parents very unpredictable and unreliable. The judge considered that the parents were unable to provide affection, safety and structure for their children. Therefore, a developmental threat was established.

Lastly, the home situation in terms of housing and financial stability. In some cases, the fact that parents did not have stable housing or lacked financial means<sup>136</sup> contributed to establishing a developmental threat. For example, parents who lived separately from each other, whereby the father lived on a campground with the leader of their religious group and the mother lived in a house with another member of their group.<sup>137</sup> As a result, the child had no stable home situation. Here, the home situation and the previously established threats to the well-being (social isolation) led to the termination of parental responsibility. In another case the parents trusted that God would provide for their needs.<sup>138</sup> This led the father to quit his job to devote himself entirely to his pastorate. The family had been living on donations ever since. At some point, the supply of electricity and gas was cut off for two months because the bills had not been paid. These cases show that housing issues and a lack of financial means do not justify a child protection measure as such. However, they can contribute to establishing a developmental threat, either due to an unstable and possibly unsafe home situation for the children or because the lack of means was a conscious choice of the parents due to their beliefs.

Contrariwise to the previously discussed cases, other cases show how the home situation could be the reason for a less intrusive child protection measure. An example is a case wherein the judge considered that, apart from the concerns for the children's well-being, there were also positive factors present in the family.<sup>139</sup> The parents proved to be very involved with their children's lives, and their progress at school. They were able to encourage their children to do well in school and were able to provide structure. The well-being concerns made a measure necessary. However, as the home situation was considered positive, a supervision order was deemed sufficient.

134 Court Rotterdam 21 May 2021, ECLI:NL:RBROT:2021:5087 and Court Rotterdam 28 January 2022, ECLI:NL:RBROT:2022:2350.

135 Court North Netherlands 27 January 2022, ECLI:NL:RBNNE:2022:173 and Court North Netherlands 19 October 2021, ECLI:NL:RBNNE:2021:4450.

136 See for example Court of Appeal Arnhem-Leeuwarden 7 November 2013, ECLI:NL:GHARL:2013:8464 and Court Groningen 28 October 2009, ECLI:NL:RBGRO:2009:BK2838.

137 Court of Appeal Arnhem-Leeuwarden 21 September 2017, ECLI:NL:GHARL:2017:8301.

138 Court 's-Gravenhage 3 June 2009, ECLI:NL:RBSGR:2009:BJ7665; Court 's-Gravenhage 13 April 2010, ECLI:NL:RBSGR:2010:BN8507; Court of Appeal 's-Gravenhage 4 August 2010, ECLI:NL:GHSGR:2010:BN9246. These are multiple cases all concerning the same family.

139 Court Utrecht 8 January 2010, ECLI:NL:RBUTR:2010:BK8714. See also Court Groningen 12 August 2010, ECLI:NL:RBGRO:2010:BN5853 (a warm tight-knight family).

Dirksen, Ismaili, Rodermond, Bijleveld & Antokolskaia

To conclude, the home situation can play a role in the court's consideration in several ways. On the one hand, when a home situation shaped by the parents' beliefs has a negative impact on a child through, for example, home schooling resulting in a delay in their educational development, an environment that is unpredictable, or a disrupted relationship with their parents, then the home situation contributes to establishing a developmental threat. On the other hand, parents who are able to shape a home situation that provides structure and affection for their children may actually help reverse the developmental threat. In such cases a lighter measure, such as a supervision order, may suffice. We saw similar considerations in the radicalization cases.

### 5.2 *Willingness to cooperate*

The second legal requirement, namely the willingness of parents to cooperate with the care that is necessary to avert a developmental threat, will be discussed hereafter. First, the cases in which parents have acted upon their beliefs will be analyzed and then cases wherein solely the belief of parents potentially has consequences for the child.

- *Extremism cases*

There were various cases in which a developmental threat was established for the children, yet their parents were unwilling to cooperate with the necessary care. The reasons for not cooperating were not always explained in the judgments. Some judgments only shortly stated that the parents did not agree with a certain measure<sup>140</sup>, or – in cases where an emergency out-of-home placement was issued due to potentially traveling to Syria – there was no time to gather information about the willingness to cooperate without possibly putting the child in danger. In those cases, the willingness of parents has therefore not been established yet.<sup>141</sup> Cases in which the willingness of a parent was discussed in more detail showed various examples of not cooperating. For example, one mother purposefully withheld important information about her new partner, a Muslim fundamentalist, who wanted to travel to Syria to join IS. By hiding her marriage to him she hindered the ability of the CCPB to draft a safety plan for the children. By doing so, according to the judge, she did not act in the best interest of her children,. This cast doubt on her reliability among the Child Protection Agency as well as the judge. This contributed to the judge ruling that the out-of-home placement should be extended. In another case, a judge stated that the parents' – who were in the middle of a divorce – distrust towards each other and towards the Child Protection Agencies made it difficult to avert the children's developmental threat while remaining at home. The lack of cooperation made it necessary to place the children out-of-home.<sup>142</sup>

140 Court Gelderland 15 August 2013, ECLI:NL:RBGEL:2013:4112 and Court Gelderland 2 September 2013, ECLI:NL:RBGEL:2013:4113.

141 Court Central Netherlands 29 August 2014, ECLI:NL:RBMNE:2014:3986. See also Court North Netherlands 26 June 2022, ECLI:NL:RBNNE:2022:2143.

142 Court of Appeal Amsterdam 10 March 2020, ECLI:NL:GHAMS:2020:837.

In three other cases, parents were willing to cooperate with the CCPB. In one case, the parents already took their children to Morocco, but were willing to travel back to the Netherlands and to receive assistance from the CCPB. This meant that the children were back on the CCPB's radar, and therefore a supervision order was deemed sufficient at that time.<sup>143</sup> Similarly, the District Court of Rotterdam saw no reason to issue an out-of-home placement as the mother was willing to cooperate with the necessary youth care.<sup>144</sup> However, the judge did question her ability to do so. The mother had expressed that she wanted to cooperate with the necessary care, but was not available when she needed to be or only wanted to take part in certain interventions, not all. The judge warned her that it was essential to cooperate, otherwise an out-of-home placement could become necessary. Lastly, in the case where concerns about the mother's potential extremist beliefs were raised, the National Support Center for Extremism indicated that they had been involved for a longer period of time and that the mother was cooperating well, thereby providing objective evidence of the mother's willingness to cooperate.<sup>145</sup> The judge further noted that in the context of her criminal proceedings, the mother was suspended with strict conditions including electronic monitoring, a location order, and interviews with a theological expert. For the time being, the mother was found to have complied with the determined conditions. Therefore, an out-of-home placement was not (yet) considered necessary. However, this remains dependent on other factors in cases such as the previously discussed home situation and well-being of the child.

To summarize, where it concerns the application of the legal requirement of cooperation with care, we see that indeed not only the willingness to cooperate but also the ability of parents to effectively do so is relevant. Namely, the ability of parents to effectively avert the threat plays an essential role in determining which child protection measure should be imposed. In cases where parents prove themselves to be unwilling to cooperate, for example by withholding relevant information, an out-of-home placement is generally imposed to ensure the safety of the child. Where parents are willing to cooperate, but are not (yet) able to avert the developmental threat by themselves, a supervision order might suffice.

- *Religious cases*

Similar to the extremism cases, parents showed various examples of not cooperating with the necessary care for their child. Examples of this are parents who did not accept help from 'wordly institutions' (including the judicial system and CCPB),<sup>146</sup> parents who denied that their behavior constituted a developmental threat which

143 Court The Hague 8 September 2014, ECLI:NL:RBDHA:2014:11272.

144 Court Rotterdam 29 April 2021, ECLI:NL:RBROT:2021:5433. In this case, various types of care were necessary for the children. This ranged from care regarding their well-being, but also assistance with dealing with their father's criminal case (allegedly joining a terrorist organization).

145 Court Gelderland 14 May 2020, ECLI:NL:RBGEL:2020:2851.

146 Court Groningen 28 October 2009, ECLI:NL:RBGRO:2009:BK2838. See also Court North Netherlands 27 January 2022, ECLI:NL:RBNNE:2022:173 and Court North Netherlands 19 October 2021, ECLI:NL:RBNNE:2021:4450.

would make the care unnecessary in their opinion,<sup>147</sup> parents who distrusted governmental institutions and in specific Child Protection Agencies,<sup>148</sup> or parents who actively worked against the necessary care.<sup>149</sup> Such reasons were taken into consideration by judges and in all these cases it followed that help in the voluntary framework proved insufficient, thus necessitating a child protection measure and in some cases even the termination of parental responsibility. For example, in the previously discussed case of parents who put their faith above all else.<sup>150</sup> Here, the judge stated that their beliefs and consequent extremely dismissive attitude towards youth care were so powerful that a correction, even in the future, would not be possible. According to the parents, whether or not to cooperate was therefore not for them to decide. The responsibility for their children was with the Lord, not with Child Protection Agencies.

There were two cases in which parents were willing to cooperate but were unable to do so effectively.<sup>151</sup> This was an important consideration in deciding which measure was to be imposed. In one of these cases, the parents' cooperation with voluntary care was not sufficient to avert the threat to the children's development.<sup>152</sup> Therefore, a supervision order was issued. Because the parents were also willing to cooperate with this, an out-of-home placement was not deemed necessary for most of their children. Their oldest daughter was placed out-of-home due to the serious threat to her well-being; the fact that her parents were willing to cooperate was not enough in that regard. In the other case, the mother was willing to cooperate with necessary care but the behavior of her child as a response to the situation made an out-of-home placement necessary. Apart from these two cases, the majority of the parents were unwilling for reasons explained above or the reason for not cooperating was not provided, only that they were unwilling to do so.<sup>153</sup>

In sum, similar to the radicalization cases, the legal requirement pertaining to the willingness to cooperate and the ability of parents to effectively do so, plays an essential role in determining which child protection measure should be imposed. In cases where parents are unwilling to cooperate because they are against the interference of worldly institutions for example, an out-of-home placement is imposed to ensure the safety of the child or the parental responsibility was terminated. Here, again, a supervision order might suffice should parents be willing to cooperate, yet this is only possible when parents are also able to do so effectively.

147 Court Utrecht 8 January 2010, ECLI:NL:RBUTR:2010:BK8714. See also Court of Appeal 's-Hertogenbosch 25 February 2021, ECLI:NL:GHSHE:2021:550.

148 Court Overijssel 12 March 2015, ECLI:NL:RBOVE:2015:1549.

149 Court of Appeal Arnhem-Leeuwarden 7 November 2013, ECLI:NL:GHARL:2013:8464.

150 Court North Netherlands 27 January 2022, ECLI:NL:RBNNE:2022:173 and Court North Netherlands 19 October 2021, ECLI:NL:RBNNE:2021:4450.

151 Court of Appeal Arnhem-Leeuwarden 11 November 2021, ECLI:NL:GHARL:2021:10515 and Court Groningen 12 August 2010, ECLI:NL:RBGRO:2010:BN5853,

152 Court Groningen 12 August 2010, ECLI:NL:RBGRO:2010:BN5853,

153 Court of Appeal Arnhem-Leeuwarden 21 September 2017, ECLI:NL:GHARL:2017:8301, Court Rotterdam 21 May 2021, ECLI:NL:RBROT:2021:5087; Court Rotterdam 28 January 2022, ECLI:NL:RBROT:2022:2350.

## 6. Conclusion

Despite increased scholarly and societal attention for various forms of (violent) extremism and related ideologies, the impact of extremist beliefs of parents on their children remains an under-studied topic. Consequently, there is a lack of solid empirical evidence to guide judges and Child Protection Agencies dealing with children of parents with extremist beliefs. This article offers an initial exploration based on the analysis of Dutch published case law to examine why and when extremist and religious beliefs of parents are considered harmful to their children by judges.

In the first part we outlined what is known so far about intergenerational transmission of extremist beliefs, the international obligations that inform Dutch family law and the Dutch legal framework. We first described various examples of potential harmful extremist ideologies of parents and defined extremist beliefs as *an abstract ideal or set of principles that is more or less highly contested*. Furthermore, we noted the gap in empirical literature concerning this topic in terms of intergenerational transmission. We then turned to international (human rights) law. From the discussed ECtHR cases, it follows that Article 8 ECHR does not allow for the limitation of parental rights purely on the basis of religious ideologies of parents. However, acting on those beliefs may lead to such restrictions. Parents are largely left free to raise their children as they see fit, no matter how extreme their beliefs are, as long as they stay within the limits of the law, including domestic child protection laws. When assessing potential harm, it is important that the actual danger to the child is established. Regardless of the type (*i.e.*, psychological, physical, social) of harm, it is a necessity that concrete evidence of such harm exists. An example of such concrete evidence is a welfare report of the parents' (religious) beliefs negatively influencing the daily lives of the children.

In the second part we examined the factors that Dutch judges consider when deciding on imposing child protection measures on children whose parents have extremist or strict religious beliefs. To do so, we conducted a systematic case law analysis of 37 cases concerning either extremist ( $n = 9$ ) or strict religious ( $n = 28$ ) beliefs. During our analysis we identified two factors that are used to assess the legal requirements that need to be met before a child protection measure can be imposed. These factors are the well-being of the child and the home situation. The well-being of the child and the home situation are used to establish if there was a threat to the development of the child (first legal requirement). To establish whether or not parents cooperate with necessary care, a judge looks at both the willingness and the ability of parents to do so (second legal requirement). The third legal requirement (parents are able to resume the care within a reasonable period of time, from the child's perspective) did not play a meaningful role in the cases and was therefore not analyzed separately. Next to the assessment of a developmental threat, the home situation also plays a decisive role in which measure should be imposed. Should parents be able to provide a structured, loving and safe environment for their child, a less intrusive measure may suffice.

Before we discuss why and when measures were considered necessary, we turn to the concrete actions of parents that were considered a threat to their child's

development. Actions as described in the radicalization cases were either traveling to IS controlled territory to join IS or inciting a terrorist act. The strict religious cases showed a wider variety in behavior of parents that led to a developmental threat to their children. For example, there were cases concerning corporal punishment, withholding medical care (including blood transfusions and vaccinations), and religious indoctrination. Other cases concerned social isolation. Here, parents placed themselves outside of western society or chose to live in closed-off strict religious communities, often combined with homeschooling or no schooling at all. Lastly, there were parents who placed all the responsibilities for raising their children in the hands of God, resulting in a lack of food, medical care, developmental delays and general health and safety concerns.

If we look at *when* judges consider child protection measures necessary, it followed first and foremost from the case law that solely the beliefs of parents are not considered to form a developmental threat (*i.e.*, harm) to the child. Case law rather showed that it were concrete actions, as described above, of parents resulting from their beliefs that may constitute harm. Following these actions in the radicalization cases, children suffered from anxiety, but were also said to have made threatening statements about ‘infidels’. Furthermore, should the parents succeed in traveling to IS territory, there would be immediate and severe danger to the child’s well-being and possible fatal consequences, due to the particularly dangerous environment. In the strict religious cases, the parents’ actions led to physical abuse, anxiety, severe stress, a lack of medical care, and developmental delays in terms of social-emotional as well as educational development. It was also emphasized that interaction with peers is necessary for children when looking at the consequences of social isolation. On the basis of the case law analysis the precise tipping point of establishing which actions are harmful enough to enable intervention in the family sphere is difficult to make. This is in part due to the fact that we have only found one case<sup>154</sup> in which no measure was imposed but also because the cases generally involved a combination of factors that lead to the establishment of harm, and, these factors may also interact with each other. What we can say however, is that when there is concrete and objective evidence of actual harm under the circumstances as described above, a child protection measure is deemed necessary. Concrete evidence can consist of statements of the child to the court, investigations by the Child Care and Protection Board (including assessments by psychologists) or evidence from the General Intelligence and Security Service in cases of traveling to Syria.

The actions of parents, as discussed above, demonstrate *why* measures were imposed in those cases – namely, to protect children from harm. This also follows from international and national (case)law. States have the duty to safeguard the development of children as functioning members of society and ensure that

154 A process in which a lot of decisions are made for a child precedes a court procedure in these child protection cases. The situation and potential threats to the child need to be reported to an institution such as Safe at Home (by a family member, neighbor, school etc.) or even the police. They assess the situation and can redirect the case to the CCPB if they have serious concerns. This means that there is a certain preselection in cases in which the concerns were so serious that they needed to be followed up on. This can explain why there are few child protection cases in which no measure is imposed. The cases in which there were no serious concerns do not reach the court.

children receive the care and education needed to become opportunity rich members of society. If parents form a threat to the safe development of their child, states have a duty to intervene. As case law showed, parents acting on their beliefs may cause such harm, mandating state intervention. In each of these decisions, the child's best interest shall be the primary consideration. This was also reflected in the analyzed case law. In the introduction we described the possibility that parents transfer their extremist beliefs to their children, potentially causing not only harm to children, but also danger to society, should the children radicalize. This aspect of potential security threats (*i.e.*, danger), was, however, not reflected in the analyzed case law. In two of the cases an ideological assessment was ordered, once for a sixteen-year-old and once for two very young siblings (eight and six years). In one of the strict religious cases, a judge mentioned the religious indoctrination of children, which could be considered a very direct and purposive form of intergenerational transmission. However, children radicalizing due to their parents' beliefs was not explicitly mentioned in any case other than the sixteen-year-old boy. It may not be taken into consideration or at least does not play a decisive role in the cases that we found (according to the judgments).

Overall, it seems that considerations in strict religious and radicalization cases are not substantially different. In both types of cases, the beliefs of parents led to actions that resulted in a developmental threat for their child. The circumstances of these actions varied greatly; traveling to an active warzone with a child is in stark contrast to, for example, home schooling due to religious beliefs, yet the consequences of these actions in both types of cases can (and did) lead to severe concerns for the well-being and safety of children.

## 6.2 Limitations

We acknowledge that this study is not without its limitations. First, as previously stated in the methodology, this study relied on a publicly available source, namely judgments from rechtspraak.nl. Since not all cases are published, we could not provide a complete overview of how Dutch judges have handled all cases that came before courts because of concerns about the parents' beliefs. This, therefore, remains a limitation of this study. Nonetheless, it can be assumed that a large part of these cases is published as they are often controversial and newsworthy cases. We therefore have reason to suspect that a relatively large part of the cases is in fact published due to their relevance for both the general public and for legal professionals. The limited number of available radicalization cases could also be due to our focus on a so-called 'hidden population'. Children whose parents have extremist beliefs are not always on the radar of Child Protection Agencies (more on this later on). This could also mean that there is not an abundance of cases to begin with. Another important point worth reflecting on is that all the radicalization

cases that we found concerned jihadism. News articles<sup>155</sup> and NCTV reports<sup>156</sup> describe an increase in other types of extremism, such as right-wing extremism. This would lead one to believe that there might also be an increase in children growing up in such environments. However, in practice there seems to be little attention for other forms of extremism. This means that children whose parents have extremist beliefs other than jihadist beliefs are less likely to be on the radar of Child Protection Agencies. This could explain why this trend is not visible in the available cases. Similar remarks have been made in other studies, also pointing towards the difficulties that institutions have in signaling and labeling these other types of extremist beliefs.<sup>157</sup> In comparison to these new type of cases, strict religious cases have been coming before courts for a longer time. This means that strict religious cases could form a valuable source of information on how to assess radicalization cases. Therefore they could perhaps be used as comparison more often when it comes to analyzing case law. This also raises the question whether this distinction should still, at least as strictly, be made in future research. Notably, as the present study shows, Dutch judges impose child protection measures based on the consequences of actions from parents, irrespective of their beliefs. Secondly, judgments are not written for research purposes. As we still aimed to provide insights into how judges handle radicalization cases, we chose to focus on the considerations as these were available. In addition, the cases as published on [rechtspraak.nl](https://rechtspraak.nl) are also relied upon by professionals in the legal domain. This method is standard practice in this field and yields a lot of relevant information with regards to our research question. However, this approach is unable to reveal potential biases in decision-making by judges. The judgments often refer back to ‘what has been discussed during trial’ to then highlight certain key factors that substantiate (not) imposing a measure. This means that potentially relevant factors are not always repeated or explicitly mentioned. However, Dutch judges have a so-called ‘duty to motivate’ (in Dutch *motiveringsplicht*).<sup>158</sup> While judgments are not written for research purposes, the duty to motivate ensures that judgments display all relevant factors that have been taken into consideration by judges. Here, that means that the reasons for imposing a child protection measure must be clear on the basis of the judgment. Where it concerns the supervision order in particular, the judgment needs to state the concrete threats to the child’s development.<sup>159</sup>

155 R. Boere, ‘AIVD: Steeds meer dreiging vanuit extreemrechts, “fantaseren over plegen van aanslag”’, available at: [www.parool.nl/nederland/aivd-steeds-meer-dreiging-vanuit-extreemrechts-fantaseren-over-plegen-van-aanslag-bf71a74e/?referrer=https://www.google.com](https://www.parool.nl/nederland/aivd-steeds-meer-dreiging-vanuit-extreemrechts-fantaseren-over-plegen-van-aanslag-bf71a74e/?referrer=https://www.google.com); Y. Candan, ‘Heeft extreemrechts de toekomst?’, available at: [www.rtlnieuws.nl/columns/column/5336433/opkomst-extreemrechts-meloni-italie-nederland](https://www.rtlnieuws.nl/columns/column/5336433/opkomst-extreemrechts-meloni-italie-nederland).

156 Nationaal Coördinator Terrorismebestrijding en Veiligheid, *Dreigingsbeeld Terrorisme Nederland 54* 2021; Nationaal Coördinator Terrorismebestrijding en Veiligheid 2022a.

157 See, for example, C. Stoeldraaijers, E. Rodermond, T. Anwar, N. Ismaili and R. Peels, *Een onderzoek naar de totstandkoming en kwaliteit van, het toezicht op, en beroepsmogelijkheden tegen ideologische duidingen*, Wetenschappelijk Onderzoek- en Documentatiecentrum 2023, p. 97.

158 The requirement that a judgment has to contain the grounds for the decision is established in the Dutch Constitution (Art. 121 GW), the Judicial Organization Act (Art. 5 JO Act) and the Code of Civil Procedure (Art. 30 CP). In line with the right to a fair trial under Art. 6 ECHR.

159 See Art. 1:255 para. 4 CC.



### 6.3 Implications

Despite these limitations, this study has shed light on an under-researched topic and from this study interesting implications for research can be deduced. As said, governments fear the intergenerational transmission of extremist beliefs due to suspected harm to the child and a potential safety threat for society. The aspect of harm has been extensively discussed in this article, as this was a decisive factor in the considerations of judges. The danger aspect, however, as previously mentioned, was not so much present in the cases. We would like to further reflect on this. It seems that Dutch judges – rightfully so – keep this danger aspect outside of child protection cases. However, we can only state this for child protection cases in which the influence of the beliefs of parents on children was at issue. This does not mean that the same holds true for child protection cases in which children for example, attempted to travel to IS territory without the involvement of their parents or in juvenile criminal law cases. Other studies have focused on counterterrorism terms such as radicalization in combination with child protection cases. Counterterrorism strategies (such as the UK Prevent strategy) can create a potential conflict between the focus on protecting the individual child and the counterterrorism concern for wider society.<sup>160</sup> There is no consensus on the role family courts should play with regards to child radicalization,<sup>161</sup> yet multiple researchers warn for the misuse of family law for counterterrorism objectives.<sup>162</sup> Taylor discussed that even though diverting children from radicalizing may support counterterrorism interests, identifying harm due to such beliefs is much more difficult. ‘Without a robust, empirically supported consensus on precisely what the harm to children is in these cases, the elision of safeguarding and security concerns could draw the child protection regime into becoming a quasi-enforcement mechanism for Prevent.’<sup>163</sup> Ahdash also discussed that specifically for the UK, the direct involvement of child protection agencies and family courts in counterterrorism was unprecedented. This novel intersection of state activity, family law and counterterrorism deserves further attention. Similar for other countries, more research on this potential interaction is necessary.

Furthermore, our results showed that in terms of harm for children, the behavior of parents due to their beliefs were the main consideration when imposing child protection measures. International and national (case) law, as well as the cases that we have discussed, showed that solely the beliefs of parents did not constitute harm (in the legal context). Judges have also explicitly mentioned this in the analyzed cases by stating that their decision was not based on the (religious) beliefs themselves, but on the way in which the parents put their faith into practice, and the consequences thereof for the child. This is in line with the approach of the ECtHR to not characterize certain beliefs or views from parents as harmful in and of themselves.<sup>164</sup> It is desirable that this remains so instead of a focus on solely the

160 Taylor 2018, p. 41-60.

161 Bickerton 2019, p. 1-27.

162 See among others Taylor 2018, p. 41-60 and Ahdash 2018, p. 389-414.

163 Taylor 2018, p. 56.

164 Taylor 2018, p. 41-60.

Dirksen, Ismaili, Rodermond, Bijleveld & Antokolskaia

ideology. Nonetheless, it remains a relevant question if extremist beliefs can be transferred to a next generation and how these mechanisms work. Recently, this topic has been gaining more attention.<sup>165</sup> While the study did not result in firm conclusions, it indicated that parents can play an active role in their children's radicalization process, yet the empirical evidence remains scarce. Therefore, the intergenerational transmission of extremist beliefs is a topic that should be further studied.

Lastly, to return to the aim of this study, future research should focus on decision-making by judges in these cases to further understand where the tipping point lies in deciding whether or not measures are necessary. Interviews with judges or vignettes can be used to gain a better understanding of this decision-making process. To delve deeper into the considerations and potentially answer the questions when extremist beliefs of parents and the behavior resulting from those beliefs can be considered harmful to their child.

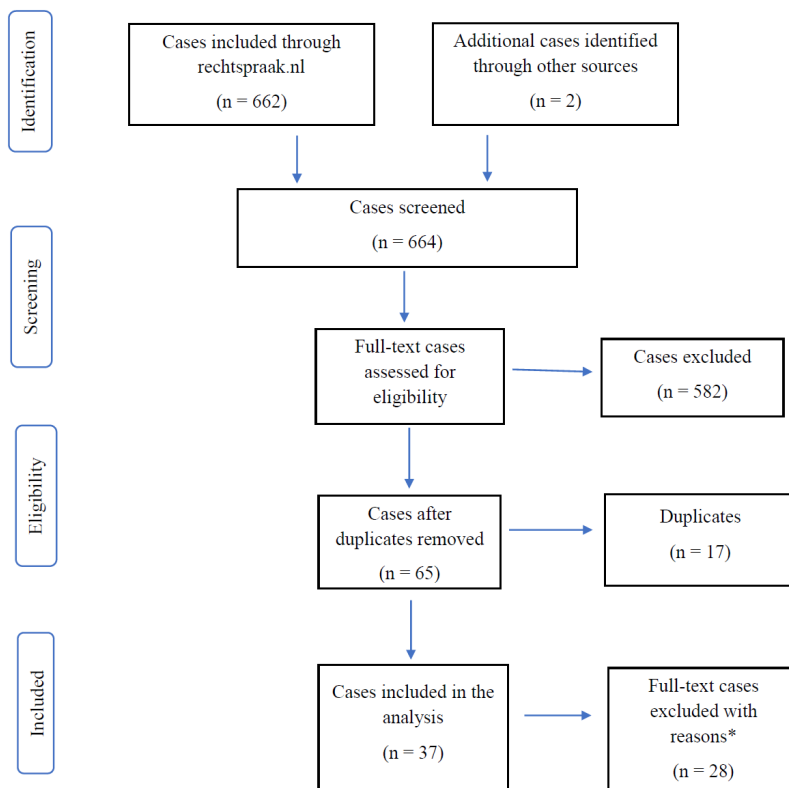
165 See for example Van Wieringen, Weggemans, Krüsselmann and Liem 2021.

## Appendix 1. Search strings

Note: as the online database is in Dutch, the search was also conducted with Dutch search strings. We have translated the strings to English below.

- (1) *Katholiek\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Catholic\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (2) *Jood\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Jew\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (3) *Christelijk\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Christian\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (4) *Protestant\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Protestant\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (5) *Islam\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Islam\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (6) *Moslim\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Muslim\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (7) *Jehova\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Jehovah\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (8) *Scientology ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Scientology ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (9) *“streng gelovig” ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: “Strictly religious” ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (10) *Sekte\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Cult\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (11) *Geloofsovertuiging\* ~uithuis\* ~UHP ~ondertoezicht\* ~OTS ~kinderbescherming\**  
Translation: Religious belief\* ~out-of-home\* ~OOH ~supervision\* ~SO ~child protection\*
- (12) *~radica\* ~extremis\* ~gedachtengoed ~ideologi\* ~kalifaat ~jihad*  
Translation: ~radica\* ~extremis\* ~thought ~ideologi\* ~kaliphate ~jihad
- (13) *Kinderbescherming\* ~radica\* ~extremis\* ~gedachtengoed ~ideologi\* ~kalifaat ~jihad ~geloofsovertuiging ~”streng gelovig”*  
Translation: Child protection\* ~radica\* ~extremis\* ~thought ~ideologi\* ~kaliphate ~jihad ~belief ~“strict religion”

## Appendix 2. Flow chart



\*Excluded with reasons:

- International child abduction cases – concerned parental responsibility and access rights, not the implementation of child protection measures.
- Cases in which there was not enough information about the role of the parents, the parents had different beliefs than their children or the influence of parents on their children was not present.